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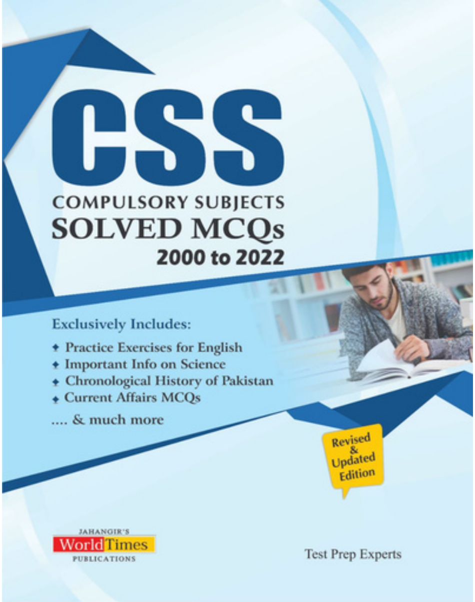

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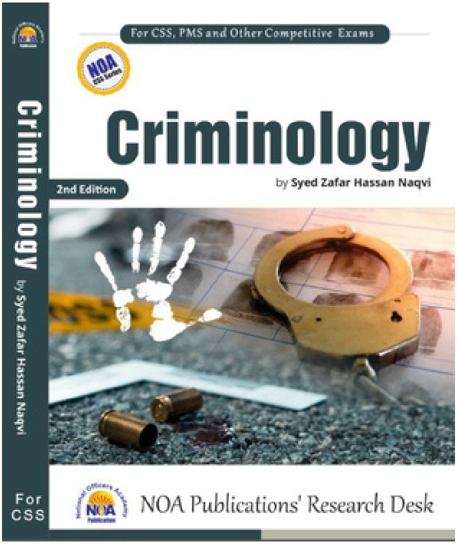

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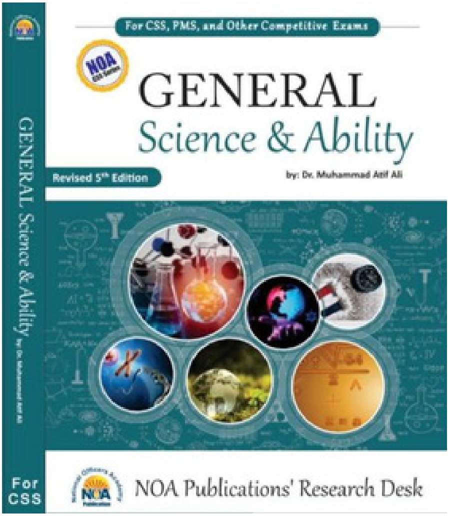

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Philosophy portion

Salient features of Plato Ideal State.

1: **Rule of philosophy.** One of the most important features of Plato's Ideal State is that only intellectual persons should rule. Philosopher King to Plato was a true statesman who represented virtue in actions. The ruler, said Plato, should be the one who has been fully educated and the one who has come to understand the difference between appearance and reality.

2: **Specialization.** Specialization is another important feature of Plato's Ideal State. According to Plato, the state first finds its building force in human's needs. The result is an inevitable division of labor or specialization of functions. Plato's theory of specialization is one man one work. He said that all the three classes i.e. philosopher rulers, soldiers, and producers should perform their own functions.

3: **Absolutism.** As demanded by specialization and non-interference, Plato gives absolute power to the philosopher ruler. He said that philosopher rulers are above the law and are not subject to criticism because they represent absolute wisdom.

4: **Equality**. His ideal state is a perfect equality between man and woman. Unlike his great student, he says that both man and woman should be provided with equal facilities, particularly educational facilities by the state. If a woman has reason and is intellectual, she should become a philosopher ruler.

5: **communism.** Plato advocates a new social order for his Ideal State. This social order is communism of wives and property among the upper two classes i.e. philosopher rulers and soldiers. Communism was actually meant to keep the two classes out of economic and worldly temptations and ambitions, so, that they could devote themselves to the administrative affairs of the state.

6: **Justice.** Plato builds his Ideal State on the concept of justice. To Plato, justice means that every person should be given an opportunity to work

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according to his/her ability and aptitude. He says that justice binds society together in a harmonious way.

7: **Aristocracy.** He says that the ruling class must consist of few able and intellectual persons. The ruling power must not be given to an ordinary man.

8: **System of Education.** Plato advises a state regulated education system. It is a system which differentiates capable from incapable and ensures the constant supply of guardians to the state. His scheme of education is meant to help every individual to discover his true vocation of life.

9: **Restriction on harmful art and literature.** In constructing his Ideal State, Plato suggest that some portion of poetry and art should not be taught to philosopher rulers and soldiers because it would make them cowards. He wants to scrutinize the art and literature in the state.

Criticism

A: impracticable

B: lack of interest

C: Defective scheme of education

D: Against human nature

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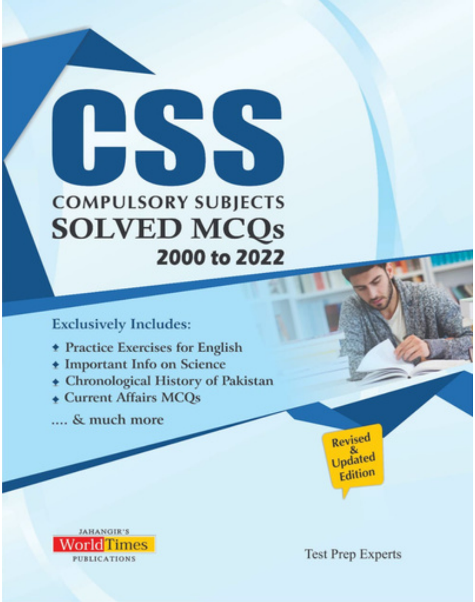
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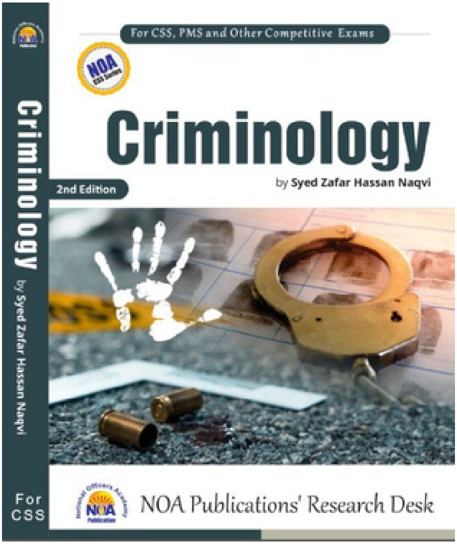
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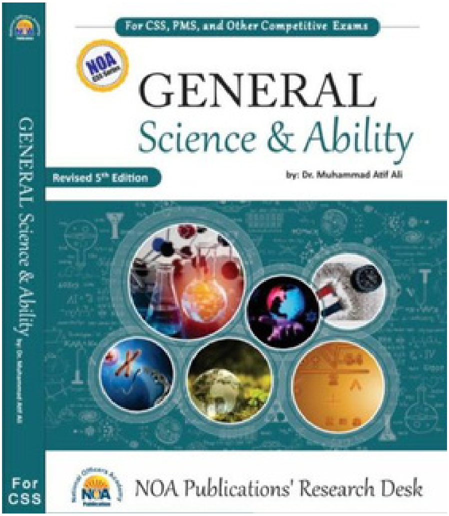
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Plato's justice

The Republic represents Plato's idea of justice, its definition and full content. He mentioned a dialogue in his Republic where Socrates was on one side and on the other side there were various characters. Cephalus, an old wealthy man defines justice as speaking truth and paying one's debts. Polemarchus, the son of Cephalus, generally agrees with his father. Justice, he says, is giving to everyone his due. But Socrates demurs. What does Polymarchus mean? Does he intend to say, for example, that justice consists in doing good to one's friends and harm to one's enemies? Polymarchus accepts this interpretation of his statement and Socrates demolishes it, and says that doing harm to an enemy may make that enemy worse than he was. Another character in the dialogue Thrasymachus states that justice is the interest of the strong. Might is right. In any society those who have power use it for their own benefit. The individualistic nature of Thrasymachus' view is protested by Socrates and stated that individual serve himself best not by imagining that he has interests apart from those of the whole community, but by adopting the view that the self is a part of the whole and is affected by what happens to the whole. What is justice if it is not speaking truth, paying debts, rendering to each man his due, the interest of the stronger, or an agreement to obey laws? Socrates cannot accept such explanations because they are in many cases wrong. All these explanations define justice as something apart from man's soul. Justice is an integral part of the soul; thus its definition requires a dissection of man's soul. Thus Plato arrives at the point of his real task, the construction of the just state and so the discovery of the principles of justice in the individual.

Three basic forces, Plato contends, motivate men. They are the forces of desire and appetite, spirit or courage and reason. Each is present in every man in varying amounts, but one is always predominant. Society may be divided into three classes according to the relative amount of each forc

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present in the individuals who comprise the community. The men who are motivated by largely by appetite will constitute the largest class. Fewer will be motivated by courage but they will still be more numerous than those dominated by reason. Thus from the standpoint of numbers, the reasoning class will be smallest.

The lowest of the three classes that constitute the state is the artisan class, whose function is to supply the community with material necessities of life. The principle of specialization must be applied so as to prevent artisans from acting in any other field of state activity. However, a community that exists merely to gratify its desires is no state at all. A refined civilization requires a large population and territory to contain it. Since people and land must be defended, the state must establish a military guardian class consisting of those who are dominated by courage. Again the service is specialized; only those who are qualified will be permitted to perform the specific function of military guardianship.

From a select handful of the soldiers guardians will be chosen the ruling class of the state. These few will be endowed with reason and motivated by their willingness to serve as rulers. They will not have only the greatest capacity to think philosophically, but they will also realize that their welfare is inseparably bound with the welfare of the whole. These qualities will flourish and permit a kind of ruler ship never before seen; a rulership absolutely devoted the interest of community.

However, Plato is searching for justice. What have class structure and and specialization to do with justice? The answer is everything. To Plato, justice is the product of class division and specialization of functions. He defines justice as "giving to everyman his due". And his due is to be assigned the particular task which he is best qualified by his aptitude and training to perform. This definition has no legal or juristic connotation. It is not concerned with the rights on an individual against the state. It has nothing to do with judicial procedures. To Plato, it is obvious that the state which arranges matters so that each person: ruler, soldier-guardian, and artisan is doing what he ought to be doing is the superior state.

Characteristics

A: Division of the society

B: Specialization

C: Non-interference

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Criticism

1: Division of society is not possible

2: static concept of life

3: Lack of opportunities

4: Ignores rights

5: Non-interference is impossible

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Plato's Education Scheme

While criticism of Plato's outline for the perfect state comes readily to mind, it must be acknowledge that his argument is powerful and pervasive. The principle that the state should be ruled by those who know is not easily refuted and it has had its supporters through the ages. In proposing his own plan of education, Plato attacked Athenian system. In Athens, even though education was compulsory but it was privately administered. To Plato, the welfare of the state depended upon the educational training of its citizens; the state, therefore, was guilty of gross negligence in permitting private agencies to control the system. Moreover, there was only elementary education in Athens which according to Plato was not adequate to train statesmen properly.

The educational plan of Plato has two phases i.e. Elementary and higher.

Elementary education. The first phase is consists of elementary education for citizens up to the age of eighteen and is followed by 2 years of military training.

Subjects: The subjects for this phase are gymnastic and music.

Gymnastic is to include not only exercise but all training in bodily care including diet. An essential purpose of physical education is the development of sound physique.

Training in music is to be directed less toward singing and instrumental music and more toward the study of poetry and literature in general. A rigid system of censorship is proposed to assure that training in "music" will conduce to the desirable social and political character of the state. All existing literature is to be revised to conform to the accepted standard.

Higher Education. After 20 years a selective screening process of Elementary Education must be taken. Those who survived would start the

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journey of advanced study. This group begins the program at the age of twenty and remains in it for fifteen years, if its members prove fit.

The first ten of fifteen years are devoted to the study of mathematics, from its basic to its higher form, and astronomy. The final five years are spent in a study of dialectic or philosophy. This last is the ultimate and final instruction. Here the first principles are exposed and the search for "truth" is launched.

At the age of thirty-five those who have successfully completed their advanced education must be sent to civil and military administrative services in order that the state benefit from their educational training. Even during this period, however, the screening process goes on, for the ultimate stage of state service has not yet been attained. For fifteen years more the training continues, now in the form of concrete and practical principles. At the age of fifty, those who have demonstrated real ability and served with genuine distinction reach the pinnacle of the state order. They join the group of guardians, whose time is divided between matters of administration on the highest level and periods of high speculations. The guardian class labors always for the state, for the preservation of the just community.

Criticism.

1: too lengthy education system

2: Ignores some important subjects. Such as economics, law and political science

3: Anti-democratic. His scheme of education leads to the rule of minority and totalitarianism

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Short notes on Plato's communism.

One of the most novel features of the Republic is Plato's plan for communism in the upper classes. This, like education, is designed essentially to maintain the status quo. Plato communism is different than that of Marx's one. It is not designed to improve a standard of living; it does not apply to the entire community; and it is more comprehensive where it does apply because it extends to family as well as to property. His communism has a political or moral rather than an economic end.

Communism of property: Plato understood the disruptive force in society of disagreements over property holdings. The struggle for political power between haves and have-nots was well known to him. If skirmishes over property were to be permitted in the perfect state, they would unquestionably upset the delicate balance that Plato was so careful to create. Such a danger could be forestalled by the elimination of private property. It could not be completely abolished or eliminated among the majority of citizens. The artisan class would be permitted to hold property because they are dominated by appetite urges. But for the upper classes, in whom appetite was subordinated to the forces of reason and spirit, communism was both possible and necessary. There would be no competition for the power among the members of the ruling and military classes and to use this power for economic aggrandizement.

Communism of wives: The scheme of communism in the Republic was not only confined to private property. It extends as well to family relationship in upper classes. Neither marriage nor any form of monogamous union to be allowed among men and women in the ruling and military classes. Breeding was to be regulated so as to produce offspring from the best possible stock. The offspring of these controlled unions were to be reared by the state. No individual parent-child relationship was to be recognized, for parents were parents of all, and children were the children of all. Abortion, infanticide, and neglect of the chronically ill and unfit are devices recommended by Plato to maintain the size and quality of the community.

Aims of Communism

A: Efficiency

B: Honesty

C: Devotion to state

D: Concentration of attention

E: Selflessness

F: Unity and harmony

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Criticism

1: Impracticable

2: Ignores fundamental human parental instincts

3: Ignores the importance of family

4: Against human psychology

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Characteristics of Aristotle's Ideal State

1: Population: He is in favor of small population for his ideal state. According to him, too large population will create governance crises. Moreover, if the population is large the people will not be able to meet and know each other. Therefore, population should be small enough that they may able to meet in an open place and make policies for themselves.

2: Territory: He suggests a moderate size of territory for his ideal state. A too large state will find it difficult to enforce its laws. Too small state will hardly defend itself.

3: Geographic location. So far as location of the state is concerned, both military and commercial advantages must be considered. The ideal state must not be land-locked state. It must have access to sea. If the state is situated near the sea, import and export will be improved and hence it will lead toward economic prosperity. However, it should not be too close to the sea because it will vulnerable to attack and the naval personals will be excluded from the body politics.

4: Education: Like Plato, Aristotle also suggests a state-controlled education system. It must be common to all citizens. Education will develop the capacities and abilities of every individual. According to him, good system of education should be designed to produce good citizens.

5: Division of society: He says that two kinds of people generally inhabit the state i.e. the full citizens and slaves. Moreover, he has of the opinion that six distinct services must be performed in the state: agriculture, arts and crafts, defense, religion and government. The slaves will perform the first three functions and the citizens will perform the remaining three. Likewise, among the citizens, the youngsters will perform defense duty; the middle ages will perform administrative function and the old will look after the religious affairs.

6: property: Unlike Plato, he is not against the possession of some property by the rulers.

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7: Constitution: He believes in constitution. According to him, a good constitution is one which can adjust itself with the changing circumstances. If such a constitution is available there will be political stability in the state.

Short Notes on Aristotle's Constitutional state

While analyzing democratic and oligarchic state, Aristotle reached to an important conclusion. He said that the best practicable state must be based upon a balance of democratic oligarchic principles. He called it polity or constitutional state. According to him, such a polity or constitutional state would not be an ideal state like that of Plato ideal state, but it can rather be attainable.

How he derived this state?

According to Aristotle there are two forces in society i.e. Quality and Quantity

1: Quality. This force of society includes: wealth, social position, education etc. in fact it is the oligarchic character of society

2: Quantity. This includes the numbers and the claim of mass of people in society. In fact it is the democratic character of society.

He said that the state dominated by either of the two forces alone would be bad state. The two forces can neither be removed nor ignored. It would be wise to form a state keeping considerable balance between these two forces. In practice, such a state may be achieved by giving powers to the middle class which will insure balance between oligarchy and democracy.

He has of the opinion that every community has its rich class, poor class and middle class. Middle class comprises the means of the class structure. The rich only knows how to command and the poor knows how to obey. The rich carries in their mind the thoughts of property while the poor are jealous and want to listen to a demagogue who promises for the division of property and lead them toward revolution and at the end, brings no relief but tyranny to the poor. On the other hand, the middle class is not so poor to become fool and not so rich to become factious.

Both Plato and Aristotle regard property as potential for disruption of society. Plato suggests the abolition of private property, while Aristotle wants to divide it to such an extent that contention over its possession may greatly minimized which is only possible in polity.

So basically polity of Aristotle is a mixed state or mixed constitution which keeps a considerable balance between oligarchy and democracy. Polity not only balances these two forces but mixes them. According to Aristotle, middle class would not interfere with administration, but as it is the class of businessmen and folk, so it will keep an eye those who administered the affairs.

Aristotle's concept of the origin of state

Aristotle concept of The Origin of State can be understood in the following headings.

1: Human nature. According to Aristotle, man is a social animal. He cannot live alone. The necessities of life compel him to live with others because he is not self-sufficient. Alone man can either be god or beast. Alone man will be denied all possibilities of progress.

2: Family. Family is the next factor which contributes in the making of state. Family comes into existence as a result of marriage between opposite sexes. To him, family is the association established by nature for the supply of man's ever day needs.

3: Big Communities. With the passage of time, the simple needs of man increased and became more and more complicated and family could not satisfy all these needs. So, several families united together to form community in order to satisfy all the complicated needs.

4: State. The path of progress leading to human improvement has continued. Both instinct and reason joined in enabling man to develop progressively more complicated organizations from family to village and ultimately to the state in his struggle for self-improvement. Political and social nature of man compels him to create an organized society which is called state.

Comparison and contrast between Plato and Aristotle

Similarities.

A: Both upheld slavery

B: Both are against democracy

C: Both are great advocates of justice

D: Both believe in welfare state

E: Importance of Education

F: Classification of society

G: Unity and harmony

Differences.

1: Differences in methodology. Plato adopts deductive while Aristotle adopts inductive method

2: Differences in views about property and family

3: Aristotle believes in constitutionalism while Plato does not

4: Plato believes in equality of man and woman while Aristotle does not

5: Plato believes in totalitarianism while Aristotle in Polity

6: differences in division of society. Plato divide society into three classes i.e. philosopher rulers, soldiers and producers. Aristotle divide it into two classes i.e. citizens and slaves.

Niccolo Machiavelli (1469-1527)

Machiavelli was immoral rather than unmoral

Niccolo Machiavelli broke away the traditional view upheld by the medieval thinkers which looked at the state in terms of its ethical and moral ends. He ignores the ethical end of the state and says that state is an end in itself and not a mean to an end. It is not the duty of the state to promote moral values of the people.

Machiavelli's theory of moral indifference is based on his study of the church in Italy. He denounces all the doctrines of church and holds the church responsible for the plight of state's affairs. The state, according to, should adopt every measure that suits to acquire, retain and expand power and for that purpose no care should be taken of what was right and wrong. He actually subordinates ethics to politics and according to him; there is no place for either morality and or religion in politics.

Machiavelli's immoral views:

A: State is an end in itself and end justifies everything. So the Prince should adopt all kinds of measures to achieve and preserve that end.

B: The prince should be deceitful in the interest of the state.

C: The Prince should be very cruel. He should have the courage of lion and the cunningness of fox. Force and fraud are the main shields in the hands of the Prince.

D: The Prince must set fear in the mind of his subjects. People should be terrified by adopting the policy of harshness.

E: According to him, cruelty is better than mercy. Virtues bring ruin and vice brings security, therefore, the Prince should not be virtuous.

F: Hypocrisy is essential for prince. Let mercy on his tongue and evil in his heart.

G: The Prince should tell lie in the interest of the state and he should not be truthful. He should be not concerned with truth and the salvation of the soul.

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H: The Prince should crush the rebellions. The use of force should be a once and for all. Slowly and gradual use of force creates resentments in the minds of his subjects.

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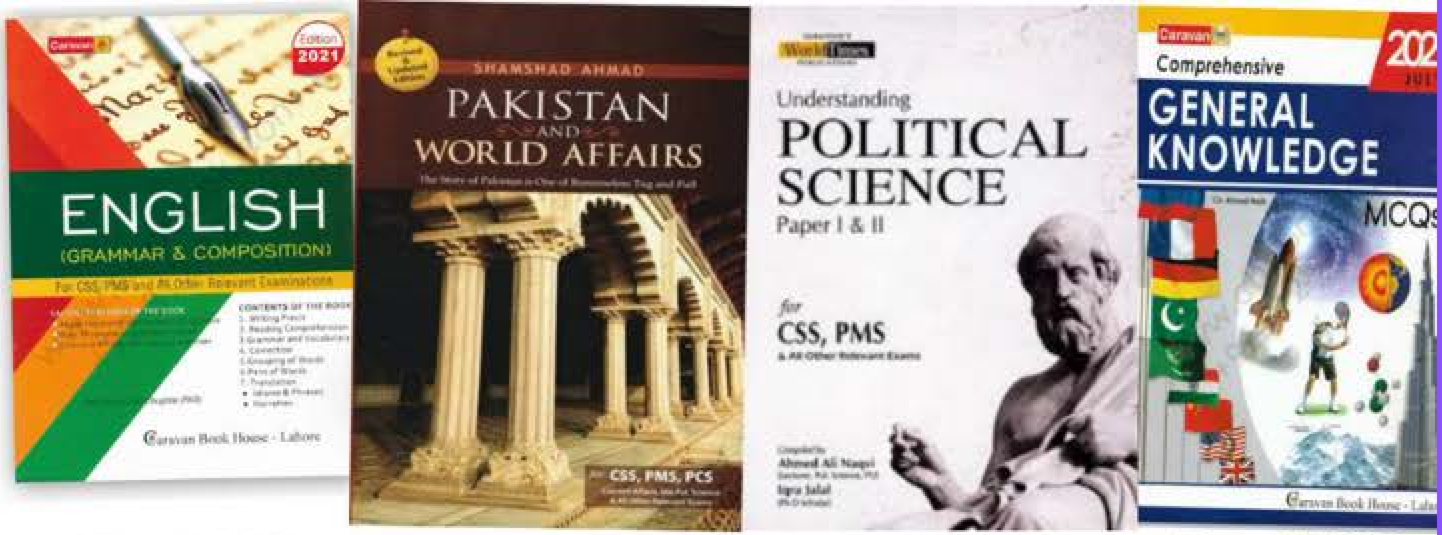
Mechiavelli's Power Politics

Machiavelli has good and bad reputations for his Prince. The ba reputations of The Prince are partly because of the tradition and partl because it is more often cited than read. However, The Prince cannot b understood without referring to the situations in which Prince was written. I is essential to go back to the conditions of Italy during Machiavelli's life time.

During his life time, Italy suffered from brutal warfare. The foreign powers of that time were intervening in the internal affairs of Italy. Internally, Italy divided into many city-states and there was no power enough to unite the country. Public morality was at low level and religion and politics were inseparably connected because of the interference of Pope in politics. Truly, it was an era of "bustards and adventurers". Like a great patriot and nationalist, the unification of Italy was his great whole purpose. He wanted that all means should be adopted to retain the prestige of his beloved Italy.

Behind everything which Machiavelli said was the assumption that human nature is essentially selfish. He frequently remarks that men are in general bad and that the wise ruler shall construct his policies on this assumption. Security is possible, when the government is strong.

He was the first systematic writer of what is called the theory of power politics in modern times. It means that force is the ultimate principle which determines a state's position in the world. His concept of power politics is based on the force of state and its ability to pursue its goal and to protect its interests. He suggests strong, powerful and absolute monarch. He condemns the hereditary monarch and advocates that Prince must be elected. According to him, state is an end in itself and end justifies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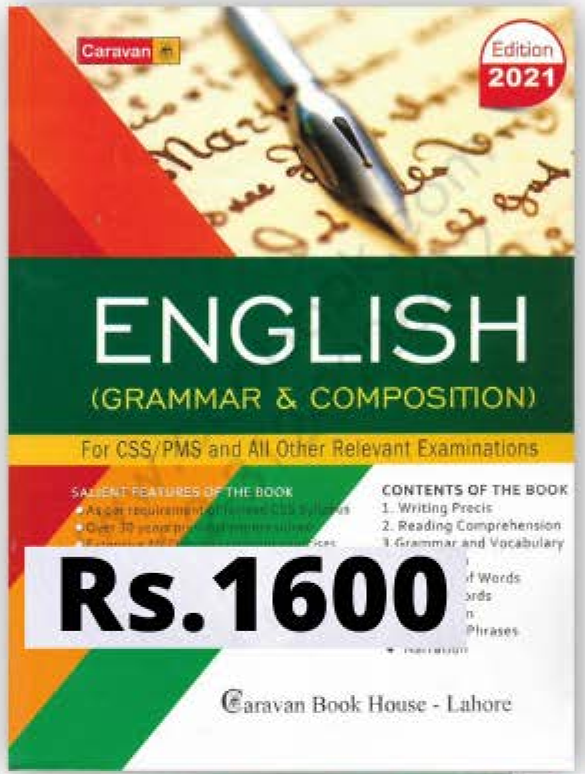
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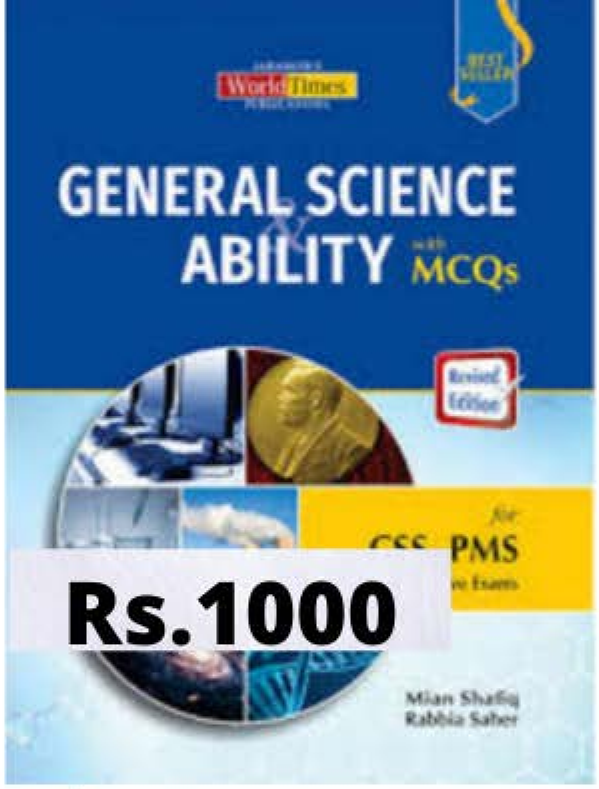
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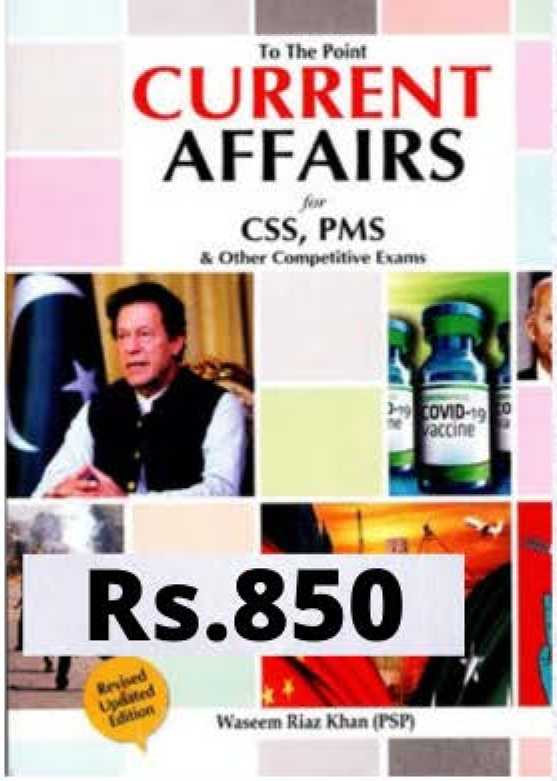
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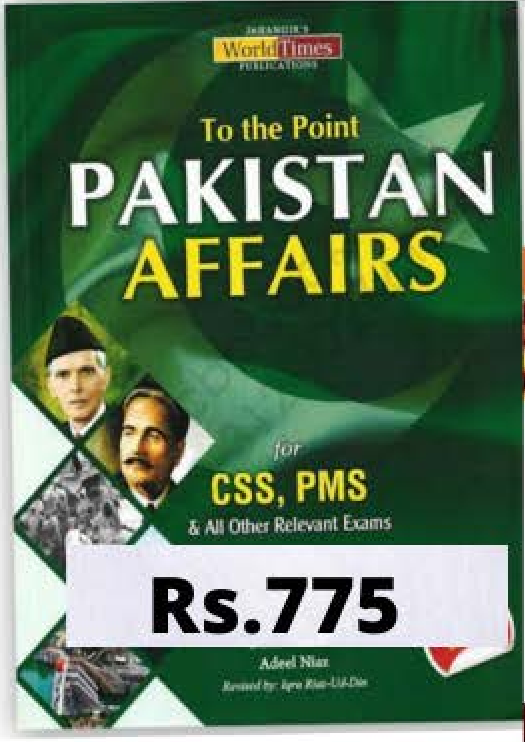
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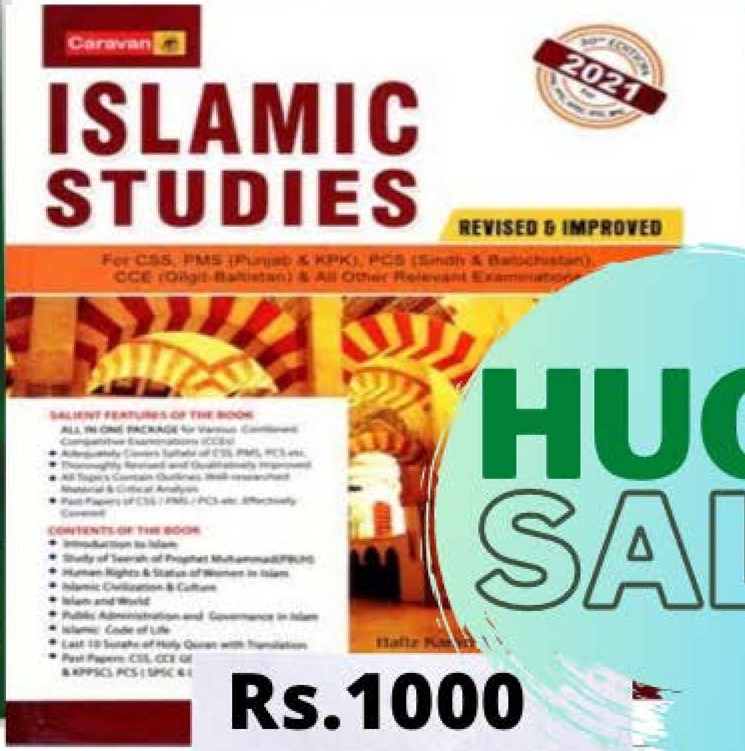
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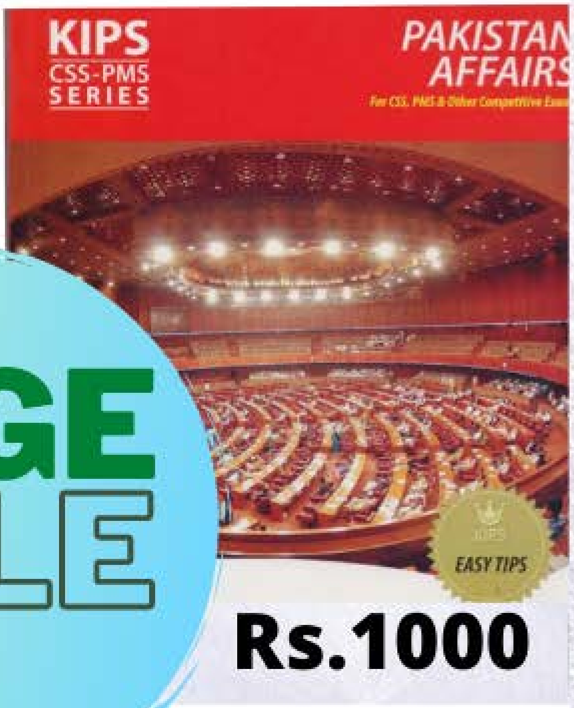
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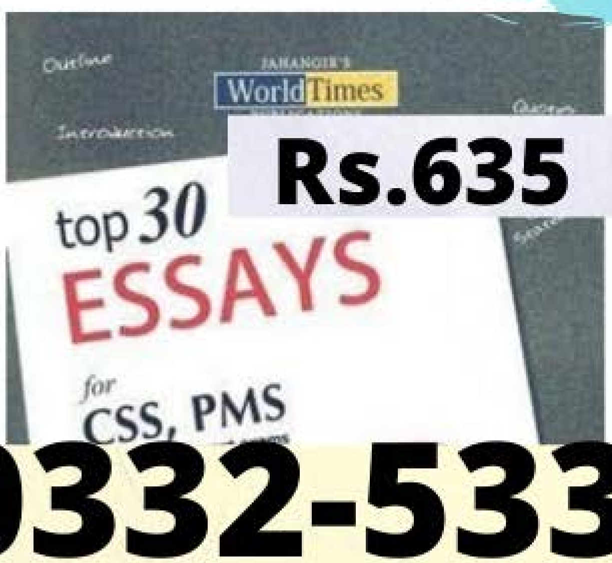
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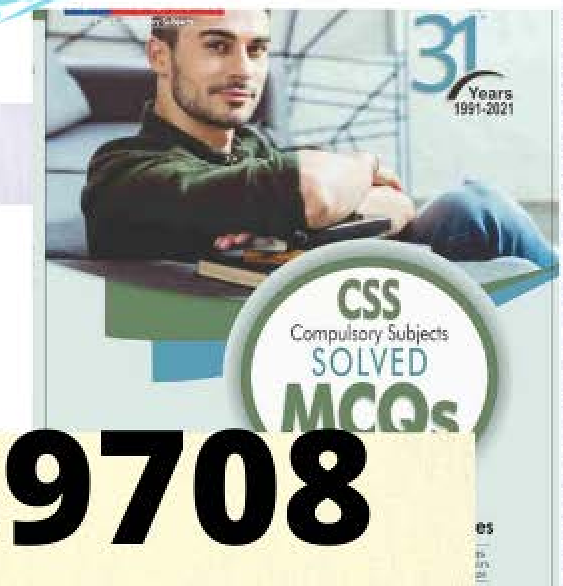
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everything. So, the Prince should adopt every mean to maintain and preserve the state.

As force is the foundation stone of the state, therefore, people should be terrified by the ruler. In order to terrify the people, the prince should have a strong national army with patriotic sentiments and equipped with all kinds of weapons. He is totally against the mercenary army because in hour of need they will not sacrifice their lives for the cause of the state.

He stresses on the necessity of the expanding of the state's territory. He has of the opinion that state must expand or expire. He says that defense of the state is the primary duty of the ruler. If the Prince feels that the enemy state is going to attack his state, he should not wait and must take the initiative and crush the enemy. Here he gives the concept of pre-emptive strike. The prince should be ready for war at any time. In time of peace, the ruler should concentrate all his efforts on making schemes for territorial expansion and annexation.

He advises the prince that if there is war between his two neighbor states, he must not be neutral. It is better that prince should side with weaker otherwise the stronger will defeat the weaker one and later it may also attack on his state.

When the prince occupies new territories, he should get away with the old traditions of the occupied areas. He should formulate new ideas and morality to avoid revolt by the new citizens.

He opined that good laws and good arms are compulsory for the preservation of state, but one cannot have good laws without good arms.

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Machiavelli as a Father of Modern Political Science

Some of his major realistic contributions to political thoughts which make him the father of modern political science are below.

1: **Modern concept of state.** He was the first thinker who used the term state in the sense which has been now used in the modern times having four elements i.e. population, territory, government and sovereignty.

2: **Secular concept of state.** He was the first thinker to separate politics from religion. He subordinated morality to politics.

3: **The concept of state as an end.**

4: **The concept of preservation of state through all means**

5: **respect for customs and traditions**

6: **Necessity of force**

7: **The concept of national Army**

8: **Theory of moral indifference**

All these concepts are adopted by the modern states, therefore, he is known as the father of modern political science.

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Thomas Hobbes

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His Social Contract Theory

Introduction. Thomas Hobbes was an English philosopher. He was greatly influenced by Machiavelli and the conditions of his country during his life time. He saw the reigns of James 1st, Charles 1st, and Charles 2nd. This was the most turbulent period of his country because there was a tussle between parliament and the king for supremacy. He also saw the Civil War in England. So, one must take this entire scenario in mind while analyzing Social Contract of Thomas Hobbes. He opens his theory with the nature of man.

Human Nature: Hobbes was basically pessimistic and he drew a very dark picture of human nature. According to him, man is essentially selfish, self-seeking, fearful, cunning and competitive to the point of combativeness. Man shows no sympathy towards his fellow beings. He always wants to satisfy his own interest even at the cost of others. Man is lust for power and he does not believe in other. He is emotional and is always led by emotions to take actions.

State of Nature: After describing a very dark picture of human nature, Hobbes describes the state of nature as a state of endless struggle and continuous war. In the state of nature, every man was the enemy of other and there was no common authority to check them. There were natural laws but those laws were written nowhere, and there was no single authority to enforce those laws. Every man was interpreting those laws according to his own interest. Men also enjoyed natural rights but actually those were natural powers. In the state of nature, no distinction was made between right and wrong or justice and injustice. In other words, might was right and life in the state of nature was solitary, poor, nasty, brutish and short.

Social Contract: The conditions in the state of nature might have continued indefinitely except for two factors inherent in men i.e. reason and fear of violent death. Man is reasonable and he can understand that unless they are willing to accept the discipline imposed upon them by a superior authority, their possessions and their very lives may be forfeit. According to

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Hobbes, in order to escape and end this ceaseless struggle, all men decided to enter into a contract. Each man in this gathering uttered the following words.

"I authorize and give up my right of myself to this man or his assembly of men on the conditions that thou give up your right to him or them and authorize all his actions in right manner".

According to Hobbes, this was the beginning of great Leviathan. In a nutshell, all men surrendered their rights to a person, and the person to whom the rights were surrendered became the sovereign- an absolute sovereign.

Implications of the contract:

1: **Unilateral.** This is not the contract between the ruler and subjects but between the subjects themselves.

2: **Irrevocable.** Once the individuals get into contract, then they cannot annul it.

3: **It creates an absolute ruler**

4: **The society according to this contract is not a growth but an artifice.**

5: **The contract negates any kind of revolution because the people surrendered all their rights to a sovereign**

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Thomas Hobbes' Sovereign

According to Thomas Hobbes, there are two kinds of Commonwealths

1: Commonwealth by "institution" in which the people voluntarily submit to a sovereign

2: Commonwealth by "acquisition" in which the sovereign takes position by force.

Fear is common in both commonwealths. In instituted commonwealth, the people fear of each other's and in an acquired one the people fear of the sovereign. Hobbes' sovereign is different than that of Bodin's sovereign. The sole right which the people retain in Hobbes' state is that of self-defense. Man is subjected to sovereign authority in order to achieve security. If the ruler cannot provide them security then subjects not to obey him. Men may resist the sovereign if their lives are at stake. However, they must exercise great care because resistance brings about revolution which then destroys sovereign power and leads people to the state of nature.

Hobbes is too prudent here and he supports absolute rule of sovereign. He believes that it will maintain domestic tranquility and he does not justify rebellion against authority. Men must obey the law for the sack of peace in the state and for Hobbes; law is the command of sovereign. Customs and traditions cannot be made as basis of law. Only those customs will be the source of law that are validated by the sovereign. He says that the leviathan is not a government by consent and that the people have only right of self-defense and not to enter into the law-making process.

Moreover, he says that the contract is irrevocable. Once the people entered into the contract, they are not justified in complaining of the injury committed to them by the sovereign.

Powers of the Sovereign

Hobbes wants to give absolute power to the sovereign i.e. legislative, executive and judicial. He has sole authority to make and amend the laws. There will be no checks upon his legislative authority and he should have a carte blanches to make, repel and amend any law which he deems necessary for peace and tranquility in the state.

He has also the sole authority to enforce the laws, choose his own ministers and control the arm forces. He possesses the supreme authority to levies taxes necessary for the state's income. He has the authority to hear and decide all the controversies and he is the supreme judicial officer. He has the power to punish and reward his subjects. In short, the sovereign of Hobbes is all in all.

No division of the sovereign power.

According to Hobbes, the sovereign power may not be divided. A mixed state cannot exist. He believes that the division of power among king, lords and commons has led England to civil war. He says that there are three possible form of commonwealth i.e. monarchy, aristocracy and monarchy. The fact is that government will be by one man, few men or by many. It cannot be a mixture of all three that will erect many sovereigns which is precarious to the peace. He supports monarchy. He has of the opinion that representative government is too slow and they can undo tomorrow what is done today. On the other hand, monarch cannot disgrace himself and it is ordinarily most efficient form of government.

He states that it is the performance of monarch that makes him sovereign rather than any claim to legitimacy. He can cool down the opposition by his conducive performance.

In a nutshell, Hobbes wants to see his sovereign as an absolute ruler who exercises power upon his own sweet will and his sovereign is responsible to no one but to himself. His only job is to provide security to the people and preserve peace and tranquility in the state.

John Locke's Social Contract Theory

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Introduction: John Locke was an English philosopher and a professor. He was an active member of the Whig Party which supported the parliament in the struggle for power. During his life time he saw the Glorious Revolution 1688, which led to the growth of democracy. Unlike Hobbes. Locke saw the progression period of England during his life time. Like Hobbes, Locke also opens his theory with the human nature.

Human nature: John Locke's views on human nature have been expressed in his book "An Essay Concerning Human Understanding" which was published in 1690. He takes a bright picture of man and human nature. He says that every human being wants to get rid of the pains. Hence, the object of all human action is to substitute pleasure for pain. Man has been endowed with the power of his reason which Locke termed as "The spark of divine nature". It inclines man towards society without the sanctions of any government.

On the basis of these arguments, Locke says that man in the state of nature was social as well as rational. He is sympathetic towards his fellow beings. Man is capable of recognizing a moral order and he also knows how to live in such an order. He is cooperative and not driven by his emotions. In short, Locke presents a very bright picture of human being.

State of nature: According to Locke, the state of nature has two characteristics. First, it is a state of "perfect freedom" wherein men do as they choose within limits imposed by the law of nature. Second, it is a state of equality for its inhabitants. He says that original state of nature was one of peace, good will, mutual assistance and preservation. There was no jungle war of every man against other man. Life in the state of nature was not pre-social, it was rather pre-political. There was law of nature and under this law men were equal and possessed equal natural rights. The rights included right of life, property and liberty. In the state of nature property was common in the sense that every man had the right to draw subsistence from whatever nature had to offer. In one sentence, Locke's state of nature was an ideal moral order.

Now a question may arise that what compelled man to make a contract? According to Locke, no doubt peace prevailed in the state of nature but this peace was disturbed due to three main defects. They were; the laws o nature were not defined. There was no legislature to make and define the law, there was no common authority to enforce the laws of nature and there were no judges to interpret those laws.

Locke says that because of these three defects, rights were not secured. Though men the state of nature was equal; they were not equal in intellect. This difference in the intellect gave nature to different interpretations of th law of nature and the shortcomings of the state of nature became visible.

Contract: Locke says that in order to get rid of the state of nature, men make a contract to inter into civil society. This is a political contrac because it establishes a civil society. Locke's contract is tow folded. In the first step, people establish a trust. People, having formed a society mus then institute a government. The government is the trustee of the people and it functions for them and responsible to them. It has obligations to those who create it and for whom it acts as an agent. It was responsible to secure the rights of life, liberty and property. If it failed to secure these rights, it would be a breach of trust and would call for revolution.

He believes in the representative form of government and gives supreme power to the assembly of men trusted by the people to establish laws. Executive is subject to legislature but the latter is not all in all.

A: It cannot exercise power arbitrarily.

B: its powers must be directed towards the general principles of the society

C: it cannot deprive a man of his property without his consent.

D: it cannot delegate lawmaking power to another body because only society has the power to do so.

Rousseaus General will

To understand the concept of "general will", describe by ~~Rossea~~ Rousseau, one must look towards his Social Contract. Rousseaus social contract is different than that of the contracts of Lock and Hobbes. In Hobbes contract, all rights are surrendered to an authoroty whose duty is to provode security. This contract is speafically rejected by Rousseau. In Lock's contract, people agree to form a society and then entrust their security to a government which is representative and responsible to them and is charged with protecting the rights of the people. These both philosophers consider the rights of individual ~~a~~ natural rights. In Rousseau contract as the the rights are social rather than natural; there ~~So~~ can be no reserving on them ~~ss~~ on an individual as ~~Ro~~ Lock's theory demand.

The Rousseau contract require that each member surrenders to the community all his rights. The surrender must be total and unconditional and in the legitimate political community the people as a body are sovereign. There now exist a public person which in its passive role is

role is known as Sovereign. The people wh
are components of the body, also have a dual
when they exercise their sovereignty through the
policy, they are citizens; when they obey, they are
To avoid the selfishness of individual, which
destroy the community, it is necessary for th
body politics to operate on "General Will" Th
is a central part of Rousseau philosophy.

The general will is an expression of the public
It emanates from all, and directed to all. Rou
says that in the welter of particular interests
community, there is a common interest which must
discovered. This common intrest must form th
of all laws. He says that general will must b
differenciated from will of all. The will of all
an expression of particular interest. What we
to do is to take from the expression of these
seperate wills ~~and~~ the pluses and minuses - w
cancel out, the sum of the differences is
left and this is general will.

He says that for the expression of genera
will, it is essential that there be no
subsidiary groups within the society, and
each citizen voice his's own ~~voice~~ opinion an
nothing but his own opinion.

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Moreover he says that following the contract which establishes civil society and the body politic, "a majority vote is binding on all." This raises problems for his theory for example if a majority makes a decision and imposes its will upon minority in the form of law, how can the minority be said to be free? For this question, Rousseau insist that no real conflict exist. The minority is wrong. Its interest is always the same as that of the majority. If it gets its own way, it injures itself as much as it injure the majority. This cannot be permitted. The minority must be force into line for its own welfare; it must be force into freedom. Here one can argued that the saving grace of this idea that rests ~~only~~ in on the fact that the submission, ~~to~~ a ~~Sovereign majority~~ is, after all, to one's true self, or at worst to a sovereign majority. ~~Rosseu~~ Rausseau himself was contious of the impligication of its proposal and made a rather unsuccessful attempt at qualific. He said that each man to alienate its property, power and liberty for the well being of community. It means that he does not surrenders all its rights while enters the community

Rousseau. But here as already discuss by Rousseau. But here are question arise that what rights individu entitled to withhold? Rousson answer is that ther is determination which must by Sovereign or majority a there we are back where we started. Rousseau qualification is ~~neg~~ neither logical nor convincing. The true meaning of general will is that a properly const and functioning majority is perfect and free from mistak

Institutions for General will:-

We may now turn to the institutional ar designed by Rousseau for the implementation of th General will. According to him two forces are th to produce action.

i) will :- will is refer to the legislative b of the government which according to Rousseau contain all of the people. The legislative must create Constitution and ~~Block~~ establish a body of laws. It must meet regularly acc to law. The inserting of the whole communit into the legislature raises another questions fo Rousseau. For example if the legislative of all the people, how it will be poss for them to meet at same time?

Rousseau suggest two solutions to this pr First he says that the seat of government to shift from one place to

According to Rousseau, not democracy and not Monarchy, but elected aristocracy is the best to form of government for general will. He said that entire community cannot concern itself with administrative task, hence, democracy is only possible in the nation of Gods. So far as monarchy is concerned, it may be the desirable form but given the character of most kings and the fact that heredity rarely produce the monarch of quality, it is unlikely.

The same is not ~~fear~~ good for legislative. Legislative power, according to him, must always be exercised by the whole body of sovereign citizens.

Role of legislature under general will:

The legislative efforts should be directed towards two ends: liberty and equality. The former is impossible without the later. There should be an equalitarian state, in which the moral and legal equality of citizens is are secured. To accomplish this goal, the division of wealth will be in such a manner that no man has to buy another and that other need not sell himself. ~~Ross~~ Rousseau opined that if if the inequality of wealth is so great, [illegible]

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that the general will must be ascert
each. Rousseau realizes that it is difficult
he says that for security and freedom, ev
inconvinience is to be overcome.
Secondly, he suggested for adoptation of
like state such was found in Greece.
then a question arise that, Will such sta
be opposed to attack? as Montesquieu sug
Rousseau admits the possibility but states
he will show how a confederation may
made to minimise such danger. Here he w
unquestionably influenced by the spirit of la
written by Montesquieu.

:. Position of executive under General will :-

Moreover the ~~division~~ agency which carry out the a
of the general will is the executive. In
plan the executive is the Government. Th
is the sovereign people and not the part
Government. Executive is agent of legislatu
is completely responsible to it. Government
created by a law not a contract. The
is contain of sovereign people and ha
power to remove the executive according
it's sweet will.

form of Govt in General will

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Rousseau has now theoretically constructed the Constitution of the Community of General will and the Institutions which best suited to the Community. But practically few questions may arise, which Rousseau is ready to give answered them.

First, there is a question to the ability of the people to see them through the complexities of interdependent

First, a question may arise that how this Complex ~~Community~~ will frame the Constitution?
characteristic of general will state:
i. Method of the making of Const:

According to Rousseau. For this purpose there is a need of legislator ~~will~~ which possess superior Intelligence. He will make the constitution and then will be ratify by the whole Community. He must be persuasive and he has no power to Command the people who are themselves Sovereign.

ii. A mediator b/w people and Govt:-

Second, how this Government and the Community will Interact with each other?

Rousseau replay is that a "Tribunals" will be made. which [illegible]

Rousseau reply is that it is necess to establish a "Tribunal" a body w Stand between the people and their Gov provide protection to both. The body has power to execute action, it can rather Some quick danger action from being taken

Thirdly, laws are inflexible. How they will m the changing circumstances? US

(iii) Emergency power of the executive:-

In emergency events, the executive power sh be increased because it is difficult to summ the community and to ~~take their~~ action to it decision. This is a risky action but the security of the community demand it.

(iv) Civil religion or state religion:-

The element of Rousseau theory highly criticised. H preferred the establishment of civil religion. He says that religion and particularly Christian religion has been a disruptive force in the community. To avoid the diversion in c the only way is to establish state - religi which principles are to be set by Sovereign no body is to be compelled for this religion, but if one a inter and ~~the~~ ~~did~~ do something contrary to the religion, then executed. The punishment court is to be consid

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Montesquieu on Securing liberty.

Montesquieu was the son of great French lawyer and was a true literateur of the mid-eighteen century. His philosophy was effected by the spirit of rational liberty which presented a reaction against absolutism prevailed in the age of Louis XIV. The mind of montesquieu was not only moulded by an extensive study but also by an extensive study. He visited the leading European countries and stayed in england for two years. There he studied writers like Thom Locke; met with different politicians; and remained in close association with the writers of that Century in England. What influenced him most in England was the practical enjoyment of liberty by englishmen and the balance of the english constitutional machinery. It was the study of Roman history and of the Contemprory english institutions that determined ~~the~~ Montesquieu's philosophy. These two reasons gave him the conception of liberty which is the central theme of his speculation.

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Montesquieu's writings are distinguished
the philosophy of 18th century which was p
tly based on the law of nature. He was a
progressive conservative. He was neither a radi
democrate nor a egalitarian denouncing previ
He criticised the social, political and ec
institutions of France with a view to reform
them not to destroy them. His works
out that he was mainly concerned with th
real spirit of liberty and harmonious work
of institutions rather than with the poli
dogmas of that age like "rights of man", So
of people and ~~Eq~~ Natural Equality of Men

Montesquieu wanted to reform political li
in France by infusing in it the British sense o
liberty and by introducing into the French
constitution the principle of seperation of pow
especialy seperation between executive an
Judiciary, which he thought was the Char
of British Constitution. The Spirit of Laws
represented an effort in this direction.

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Liberty and the seperation of power

The theory of "Seperation of power" is the best known theory which exerted influence upon Europe and America. Montesquieu is concerned with the Constitutional arragement necessary for in a Government to Secure an adequate degree of liberty for the Individual and at the same time it assure that Government has the necessary authority. He carefully distinguished liberty from license. He said that the freedom to do anything one can get away with is not true liberty. The only valuable liberty is that which we enjoy under the law. The true liberty is that we have to do those thing which we ought to do and to abstain from those things which we are prohibited to do. Liberty is not anarchy: there must be laws but laws must be of the right kind which do not deprived people of their rights. Only a moderate government can make such laws and moderation in Government is very rare. In order to establish and maintain a moderate govt, power must be checked with power. One govt that has political liberty as its "particular end" has achieved that goal.

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That it the government of England and in description of that governme Montesquieu developed the theory of separ of power.

In all governments there are three organ legislature, that make, and amend the laws; ex that execute and implement the laws; judiciary that adjudicate the laws. Each power should exercised by a different body or person. I of all ~~these~~ of them in the same body will in the lack of general moderation, necessary to the forming and execution of laws to political liberty.

If the legislative and executive powers ex by the same persons then liberty is no possible, because apprehension may arise the monarch can make tyrannical laws execute them in a tyrannical manners. Again there is no liberty if the jud power may not seperated from the two organs. If it is not seperated the liberty of the subject would arbitrary [illegible] ; For the [illegible]

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might behave with violence and oppression.

Some aspects of the Montesquieu's of the judicial power are confusing and to understand his precise meaning is difficult if not impossible. As compared with legislature and executive, judiciary in the sense is nothing. It means that the powers of the judge in disputes at law is less significant then the power of making and executing the law. However, it is important enough to justify its seperation from the other branches of government. Despite his extensive consideration of judicial power, Montesque is less concerned with ~~judicial~~ it than he is with legislature and executive. He said that legislature must consist of whole people, but as it is impossible in large states and ~~inconvenience~~ convenient in small states, representation must be used. Representative should be elected by the people from different areas. Once they are elected they should be left free to discuss and make decisions without the interference of the constituency. All people who have their own will should be permitted to vote. The people generally lack the capacity to share a vital

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role in the matters of government but are capable to chose those who do. He said that election should be applied to one part of the legislative body, that repr the commonality. In all states some people born by birth riches and honors are en to seperate recognition. The commoners would exact such laws that are against the in of the upper class. Therefore nobility shou seperately elected to the legislative body. this way the nobility will check the licentiou of the Commoners, and the Commoners can oppose the encroachment of the nobility.

Moreover, the executive power should be exer by Monarch. To place such power into the of legislature is to destroy the moderate Government and it will lead to the lo of political liberty.

There should be regular election to th legislative body otherwise the vacancy would filled through appointment and the peopl be deprived of the fruit of election.

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Montesquieu as Aristotle:

(1) Both adopted emphirical method

(2) Both support Idealism

(3) Both have worked upon seperation of Power

(4) Both agreed upon the influence of geograph on politic

5) Both classify governments on the basis of law.

(1)

Likewise the legislature should not have the pow
to remove the executive, such authority would
place legislature above the executive.
Legislature must investigate the However,
laws and to punish those execution of
who have improperly ministers of King
enforced the law.
Finally the power of veto must lies with
the executive over the authority of legislature.
The constitution of england exectly
these principles, however Montesquie illustrate
that he does not assert that the say said
enjoy political liberty, he has just england
their laws provide for it. said that

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Montesquieu's nature and principle of Government:-

Def:- By the nature of government, Montesquie mean the form of government found in a civil society. By "principles" the underlying force by which that society is motivated. Certain laws are appropriate to both nature and principles of government and Montesquie devoted much attention to this problem. According to him, there are three forms of government

(i) Republican
(ii) Monarchy.
(iii) Despotism

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(i) Republican:-

In a republican all or some of the people govern. If all govern that is democratic republic: if few govern that is an Aresteeratic republic. The matter of who is to govern, ~~wether~~ whether all or few should be settled in a right manner and with utmost care, so ~~as~~ as to achieve stability. Neglect in this regard was the principle causes the downfall of Empire. The people of republic must ha the ability to choose their political auth rather than to rule directly. The Ari ought not to exhibit a wide gap between elite and the people; it ought to tend m to democratic than to ~~a~~ monarchic principl According to him, in a republic the Gov principle is the virtue of the people. Vi signifies several things such as love of equality, willingness to subordinate the Ind to the general Interest. The people in dem republic must adopt a self-restrained p which preventing them from abusing the authority.

The underlying principle of Aristocrat republic is also virtue, but since only few govern here, virtue need not to be widespread as in democratic republ The governing aristocrats enact law to the people. This is not difficult; the rea problem in aristocracy is for the nobles [illegible] themse

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(ii) Monarchy:-

In monarchical form of Government only one rules by fixed and established laws. Montesquieu has the opinion the in monarchy, monarchical powers flow through and is checked by other, intermediate, Subordina and dependent powers ~~such~~ particularly by the nobility. If the privileges of the lords and the clergy are abolished, either despotic Government or democracy will result. According to him, it is also necessary for monarchy to have a depository of the laws. This authority should be vested in the judges of the Supreme Courts who promulgate the new laws and revive the ~~ob~~ obsolete.

The principle of monarchical Government is honor. The laws takes place of virtue and laws are made by those who hold authority in monarchy. The ruling classes, including the King are ambitious. They seek to serve their own interests by enhancing their honor, but in doing so they serve the public interest. The good result is possible, because the persuit of

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self-interest leads to the accomplishm of many "glorious actions" and becau the ambitions of one or class are chee by others.

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(iii) Despotism:-

In a despotism one rules but d so arbitrarily. In this form of gov the ruler is un-restrained by law. M says that in practice, despot is na lazy and ignorant, turns the conduct government over to a "vizier" who is in with the full power of the despot. Mon feels no embarrassment to say that Fran a despotism and that Richelieu and Ma were its viziers.

The underlying principle of despotism is Men obey because the do not dare to otherwise. Neither virtue nor honor exist the despot; only submission is possible is replaced by the will of the despot. If despotic prince ceases for one movement uplift his arm ... all is over.

Laws and their relations to Nature and Principle of government:-

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Montesquieu's books, The Spirit of Law contains various kinds of law and its relationship to each of the form of government and principles. He has the opinion that if the laws are appropriate and a proper spirit is observed in their formulation and application, the stability of the society will be preserved. If the proper spirit is not observed the government will be imperfect and in danger of collapse. He described different kinds of laws for different forms of government.

(1) Laws of education:-

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According to him, in a democracy education must teach love of country, principles of self-restrains and the manners through which they choose those who governed them In a monarchy, education should teach the importance of self-interest, but

Laws and their relations to Nature and Principle of Government:-

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it should be enlightened sel[illegible] leading towards the general good. despotism, servility should be tau[illegible] In each case the law will evidence proper spirit if it support that [illegible] upon which the structure of govern[illegible] rests.

(ii) Law of economics:—

In democracy the law should mai[illegible] the equality of its people especially ec[illegible] equality. Material wealth does not ex[illegible] sufficient abundance to permit univers[illegible] affluence. If some are to be ~~xeee~~ ric[illegible] will have to be poor. Such a circumst[illegible] destroy the spirit of equality upon whic[illegible] democratic society rests, and democra[illegible] die. It is impossible to distribute the w[illegible] on equal basis, but there should be well-defined limits ~~xxxp~~ for inequality [illegible] and maintained by law. In aristocracy [illegible] is the key to stability, if equality is a[illegible] the nobility [illegible] corrupt. [illegible]

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compelled to pay taxes and to be generous with common people. They should be prohibited to indulge in commerce and the law of primogeniture should be abolished to prevent the concentration of wealth in few hands

In monarchy, hereditary nobility should be maintain, along with the privileges. Taxation laws should not be burdensome, and duties should not be so much on nobility that they become incapable to perform those glorious actions which contribute to the public good. In despotism, it is necessary to have a large army for the maintainance of peace. No doubt, it will be an economic cumbersome on the people but it is unavoidable.

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(iii) Civil and Criminal Laws:

Montesquieu, next consider civil and criminal laws and judgements and punishments in various forms of government. In democracy the vast and complicated structure of civil and criminal laws, rules and regulations bring about destruction for liberty.

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In despotism there is a little re
for criminal laws because it is th
will of the govern and not of the
In monarchy, the simple and direct
of laws often regarded with envy. Ho
it should be understood that a gov
of laws, a government based upon th
of law, require laws and that they will
in number and complexity as time goes on

(iv) Laws of Corruption:

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The Spirit of Laws also deals with M
views on the corruption of various form
Government. Montesquieu has the opinion th
a government's corruption begins with the
it's principles. The superstructure of every
rests upon the ~~fo~~ foundation provided by
principles. When the foundation is alt
the superstructure must change accordin
In a democratic republic the feature
is [illegible] ality, but it

Kind ~~of~~ of equality. In this equality differences in human capacity are recognised, in which those with superiour abilities govern but do so according to the law under which they are equal of their fellows. If this principle is altered corruption will be the result.

Virtue is also the principle in aristocracy, and corruption occurs when the nobility rules arbitrarily rather than on the basis of established laws.

In monarchy it is necessary that the powers must be share among nobility, clergy, courts and king. Corruption occur when the king deprives all other groups of their traditional authorities.

In despotism, corruption is impossible because it is already corrupt.

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(v) Laws of territory:

The extent of territory occupied by the members of society has a vital relationship with the form of government.

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According to Montesquieu a republic demand a small territory. It demands an agree among the citizens for their common Interest and this cooperation cannot be secured in large area where interests are too m and too diverse. If the republic is too sm it will be easily envade by enemy sta Montesquieu suggests the establishment of for the soluation of this dilema.

According to him, monarchy acquires a mo territory. A too small monarchy will becom republic and a too large monarchy will be controlled by the nobility. In ~~eog~~ either c monarchy will be destroyed. Here, again, h the unless a large territory is governed on principle of confederation, ~~monarchy~~ it will becom ~~Con~~ despotism in which the citizens must made to fear the central authority, so that they will not revolt against it. Montesquieu's Ideas concerning the relationsh between the extent of territory and govern form are well known and considerably in those who framed the Constitution of ~~U~~ the United States of America.

"Dialectical Materialism of Marx"

Karl Marx took this theory from Hegel dialectical method. According to Hegel, progress result from the conflict of opposing forces. However, he reversed Hegel's view that the conflict is in the realm of Ideas and that material forces are only reflections. The clash, Marx says, is one of material forces, and Ideas are only products of the material nvoirnment in which man live. While discussing Marx's theory of dialectical materialism, it must be kept in mind that Marx borrowed this theory from Hegel.

The Components of his theory:-

(1) Forces of production:-

According to Karl Marx, in every society the fundamental determinant of all other development is the forces of production. It consists of raw material or natural resources and technology by which these materials are converted into consumable goods.

) Relations of production:-

The forces of productions give rise to a

particular relations of productions". These
Social relationship which form the
in Society. This relationship always
by the property factor. Thus in this relation
there are those who have and those who
And those who have, Commond, and those
have not, obey. This relationship is always
for the Commonding Class. The Change in
forces of production, demands the change
production of relations. If change happened
forces of productions and not in relations
then a tension will arise between the
involved in this process. The forces of
and relations of productions, combined
the economic foundation of every Society.

(3) Superstructure of Society:-

According to Marx, on this economic
a Superstructure is rested which
the non-material, things of Society. This
such things as laws, moral codes, religio
and Governmental forms. The superstructure serves
essential purposes. (i) First, it justifies the posit
the Commonding class. According to Marx, the
Strictly a mattere of economic interest

The laws it exacts, the religion it embry embraces, the moral behaviour it advocates. all supporting the rightness of the commanding class in society.

ii) Second, the commanding class, use the superstructure as weapons to maintain its superior status in society. Laws are formulated to protect its property and its authority. Governments are formed to enable the commanding class to impose its will.

All the elements of the superstructure depends upon the economic foundation. The change in foundation will always bring a transformation of the super-structure, as the new commanding class require, a new superstructure for rationalization of its position. What Marx saying here is that, the principles of superstructure hich constitute the Ideology of a society cannot be called as "true" or "untrue" ~~are~~ the ordinary sense. They are rather to called as "appropriate" and "inappropriate" epend upon how suitably the function for e ruling class.

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Karl marx opined that ~~mon~~ men do not
the social invoirnment in which they cre
They are, instead, the products of that liv
It is not the consciousness of the men invoirn
determine their existence, rather their tha
determine their consciousness. He social
is incable of thought that reject the said that
Created by the capitalists. A framew
in capitalist-dominated society is so mu
a product of that society that it cann
possible for him to think against the
basic principle of that society.

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Assassment:-

Marx's theory of dialectical materialism is
to a large extent. He had to leave rooms
his theory for persons like himself, Ang
few more who were able to think outs
Capitalistic frame work, in which they live
In his theory, Marx has given too much g
however, he enunciated the germ of truth. M
Capable to think outside ~~bur~~ their society, but
be ignored that to a considerably extant,
products of their envoirnoment. Indeed, the
to cling to the past principles is a

cause of social unrest and, sometimes, of revolution. Moreover, he said that economic ~~structure~~ factor determine the superstructure facets of the society. On this bases, he said, that we cannot acheive any geniune reformation of society and improvement of the conditions of the people merely by tinkering with superstructure itself. Only the change foundation will bring substantial ~~reform~~ transformation of society

In the ~~latter~~ later writtings, both Marx and Angels belived that economic factor is the important factor. that determining society, rather than the only factor which do so.

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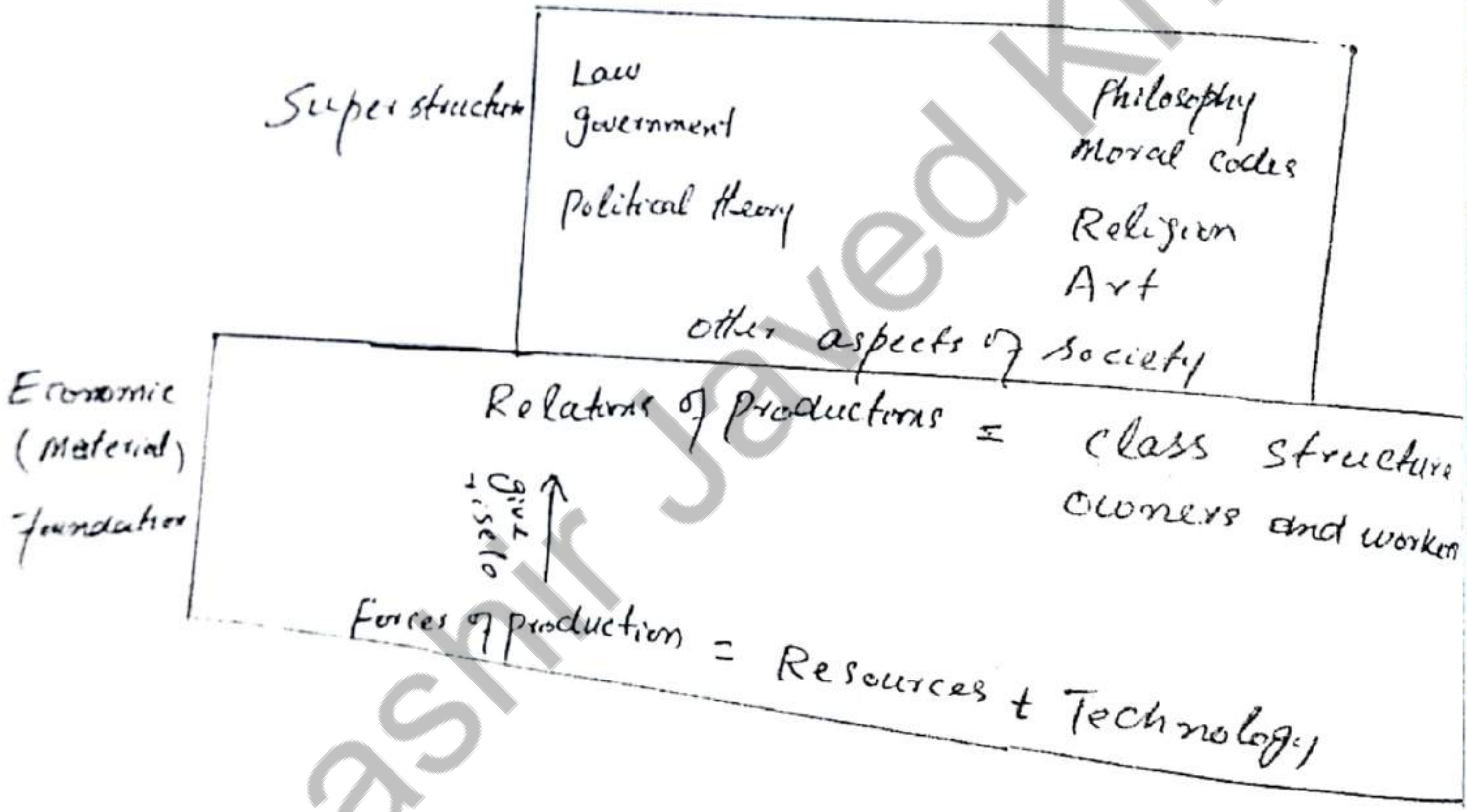
Superstructure
Law
Government
Political theory
Philosophy
Moral codes
Religion
Art
other aspects of society
Economic (Material) foundation
Relations of productions = class structure
owners and workers
give rise to
Forces of production = Resources + Technology

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Class Struggle of Karl Marx

In the analysis of Marx's dilactical Materialism, two interpretations have been acheived.

i) Conflict b/w method of production and relation of property

ii) A clash of one class against another.

Whatever, Marx intended, there is no question but dialectical progresses through the means of class struggle. The concept of class struggle is highly important in Marx's theory. We must consider both its causes and effects.

In his theory of dialectical Materialism, Marx believe that class structure is dependent upon the forces of production and that the culture of society is utilized by the dominant class, to hold another class in subjection.

Here we assume that in the early stages of the history of society, both the class structure and the cultural aspects were suitable to the prevailing forces of productions. There were no Skermishes b/w the and classes and one Commands and the other obeys unquestioningly: What happened then, which disturbed the equilibrium?

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The answer is a changing technology in the
method of productions the owner of produ
alter the technique in order to maximise th
production. In doing so, they were not awar
they are destroying the foundation. upon which
entire system rests. The forces of produc
come ~~come~~ into clash with the relations of pr
for stability, it would be necessary to al
relations of production to adjust the class
But instead, the dominant class tries to m
the status quo, rather than to alter the f
of production. In this way, the tensions and
Contradictions in the system grows to grea
The dominat class employs the factors in sy
to maintain the subjugation of the subordinat
but all in vain. Nothing can stand in the
of inexorable movement of dialectic. A poin
ultimately reach in which the forces of pr
completely incompitable to the class structure
this is the period of social revolution in w
the ~~class~~ organization + organization of class
place and new superstructure is establish
meet the new needs of the situation. A
to Marx, this dialectical process is both re
and progressive. He said that present is alw
better than past and not so good as the fu
be.

Influence over generations, a fact ~~tt~~ which can't be ignored easily.

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Marx said that this phenomena has occurre several time in history. The Asiatic, the ancien the Feudal and the capitalist society succeede one another as the forces of productions in each gradually made unfit the ~~of~~ relations of production and ~~St~~ super-structure of its produ He said that we are currently in midst of recurrence of the dialectical transition, one tha will result in the proletariate taking control of the forces of production.

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Assessment:-

Professor Mayo has argued that it is abs to hold that history is the story of class Strug This only means that all important conflicts in the history have resulted from class ant whereas such ~~a~~ struggle contributed a littl in the historical conflicts. Marx defended by saying that only class wars have bee significant in the history. This is also absur because, the view that economic cause has trig wars in the history is more easy to defend but almost equally invalid. In this context, n economic causes are also involved which Marx But, despite all his errors, he had enorm

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Foucault Power:-

There are as many concepts of power as there are social theories. There is almost no sociological or socio-psychological theory which doesnot provide a distinctive notion of power. Almost every philosopher has defined power in one way or the other. However, almost all other philosophers agreed on that power is an instrument of Coersion. Foucault, the French postmodernist, has been hugely influential in shaping understanding of power, leading away from the analysis of actors who use power as an instrument of Coersion toward the idea that 'power is everywher' diffused in discourse, knowledge and 'regimes of truth'.

Power for Foucault is what makes us what we are, operating on a quite different level from other theories of power. His work marks a radical departure from previous modes of conceiving power and cannot be easily

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intagrated with previous ideas, as power defuse ratter than concentrated, enacted than possessed, discursive ratter than pu Coercive.

Foucalt challenges the idea that power ~~we~~ wielded by state through individual a of domination or Coercion, Seeing it instead dispersed and continuous. He said that "po is everywhere and comes from everywher. S this sense power is neither an agency nor Structure. Instead it is a kind of 'metap or 'regime of truth' that pervades Societ which is in constant flux and negotiation".

Foucault uses the term 'power/knowledge Signify that power is constituted throug accepted forms of knowledge, Scientific and 'truth'. He says that truth is a of this world and not from religion. Society has its own regime of truth. is now going on a "general politics"

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on truth ~~and~~ the Criteria of truth for each Society is:

(a) The types of discourse which it accepts and believes as true

(b) The means through which we can differenciate between truth and false Statements

(c) The occurence of truth statement

(d) The means by which each is Sanctioned. If true how it is deemed to be true, if false why it is considered to be so.

(e) The Status of those who are charged with saying what counts as true.

According to Focault, these 'general politics' and 'regimes of truth' are the result of Scientific discourse, and are enforced constantly through the education system, the media and through political and economic ideologies. In this Sense, the battle for truth is not for some absolute truth that can be discovered and accepted, but is a lesser battle.

Foucault is one of the few writer
power who recognize power that power i
just a negative, coercive or repressive th
that forces us to do things against our w
Instead, power can also be a necessary,
productive and positive force in society.
said " We must cease once and for all to
the effects of power in negative terms tha
it excludes, it represses, it masks and it
conceals. In fact power produces; it pro
reality, it produces the rituals of tr

According to him, power is also a major
source of social discipline and conformity
In shifting attention from the 'sovereign'
exercise of power, traditionally centered in
feudal states to coerce their subjects, fo
pointed toward a new kind of 'disciplinary
power' that could be observed in admini
ive systems of 18th century's Europe, such
as prisons, schools and mental hospitals

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He said that ~~through~~ ~~the~~ the systems of surviollance and assessment of prisons, schools and mental hospitals no longer required force or violence, as people learned to discipline themselves and behave in expected ways.

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Through the theory of ~~knowledge of~~ power/knowledge his aim was to undermine the notion that the emergence of modern political liberalism resulted in greater freedom for individuals. He argued to the contrary, that modern liberal societies are oppressive, though the oppressive practices they employ are not as overt as in earlier times. Modern forms of opperession tend to be hard to recognize as such, because they are justified by ostensibly objective and impartial branches of social science.

In a process that Foucault called "normaliza
a supposedly objective science lebels as "normal
or "rational" behavior that society

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deems respectable and desirable, an behavior that is otherwise ~~is~~ becomes u and irrational. Behavior that is spec as odd ~~p~~ by objective social scienc be classified as a symptom of mental

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Foucault viewed modern bureaucratic inst as promoting rationality and humane concern as really amounting to an arbitrary exer of power by one group over another. The u of rational argument to support or opp a political view, according to Foucault, is merely another attempt to exercise arbitrary power over others. Here, accordingly, he esc any blue print for political reform or any explicit articulation of moral or rational norms that society ought to uphold.

In conclusion, a key point about Foucault's app to power is that it transcends politics and se power as an everyday, socialized phenomen This is why state-centric power struggles, including revolutions, do not always lead to change in the social order.

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Gramsci's Hegemony

The idea of a 'third face of power', or 'invisible power' has its roots partly, in Marxist thinking about the pervasive power of ideology, values and beliefs in reproducing class relations. Marx recognized that economic exploitation was not the only driver behind capitalism, and that the system was reinforced by a dominance of ruling class ideas and values. This led to the Engels's famous concern that 'false consciousness' would keep the working class from recognizing and rejecting their oppression. A famous analogy is made to workers accepting crumbs that fall off the table (or indeed are handed out to keep them quiet) rather than claiming a rightful place at the table. The Italian communist Antonio Gramsci, imprisoned for much of his life by Mussolini, took this idea further in his Prison Notebooks with his widely influential notions of 'hegemony' and the 'manufacture of consent' (Gramsci 1971). Gramsci saw the capitalist state as being made up of two overlapping spheres, a 'political society' (which rules through force) and a 'civil society' (which rules through consent). This is a different meaning of civil society from the 'associational' view common today, which defines civil society as a 'sector' of voluntary organisations and NGOs. Gramsci saw civil society as the public sphere where trade unions and political parties gained concessions from the bourgeois state, and the sphere in which ideas and beliefs were shaped, where bourgeois 'hegemony' was reproduced in cultural life through the media, universities and religious institutions to 'manufacture consent' and legitimacy. Here Gramsci's hegemony comes close to Foucault's ~~Power/Knowledge~~. Knowledge/Power

The political and practical implications of Gramsci's ideas were far-reaching because he warned of the limited possibilities of direct revolutionary struggle for control of the means of production; this 'war of attack' could only succeed with a prior 'war of position' in the form of struggle over ideas and beliefs, to create

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a new hegemony (Gramsci 1971). This idea of a 'counter-hegemonic' struggle – advancing alternatives to dominant ideas of what is normal and legitimate – has had broad appeal in social and political movements. It has also contributed to the idea that 'knowledge' is a social construct that serves to legitimate social structures.

"It was Gramsci who, in the late twenties and thirties, with the rise of fascism and the failure of the Western European working-class movements, began to consider why the working class was not necessarily revolutionary, why it could, in fact, yield to fascism." (Gitlin, 1994: 516)

Gramsci was concerned to eradicate economic determinism from Marxism and to develop its explanatory power with respect to superstructural institutions. So, he held that:

- Class struggle must always involve ideas and ideologies, ideas that would make the revolution and also that would prevent it;
- He stressed the role performed by human agency in historical change: economic crises by themselves would not subvert capitalism;
- Gramsci was more "dialectic" than "deterministic": he tried to build a theory which recognised the autonomy, independence and importance of culture and ideology.

"It can be argued that Gramsci's theory suggests that subordinated groups accept the ideas, values and leadership of the dominant group not because they are physically or mentally induced to do so, nor because they are ideologically indoctrinated, but because they have reason of their own." (Strinati, 1995: 166)

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Can we conclude that "hegemony" is a strategy exclusively of the bourgeoisie?

War

No. In fact the working class can develop its own hegemony as a strategy to control the State. Nevertheless, Gramsci stated that the only way to perform this labour class control is by taking into account the interests of other groups and social forces and finding ways of combining them with its own interests.

If the working class is to achieve hegemony, it needs patiently to build up a network of alliances with social minorities. These new coalitions must respect the autonomy of the movement, so that each group can make its own special contribution toward a new socialist society.

The working class must unite popular democratic struggles with its own conflict against the capital class, so as to strengthen a national popular collective will.

How does the hegemonic class manage to maintain its ideology over time?

Hegemony is readjusted and re-negotiated constantly. Gramsci said that it can never be taken for granted, in fact during the post-revolutionary phase (when the labour class has gained control) the function of hegemonic leadership does not disappear but changes its character.

Is violence the only way to subvert dominant "hegemony"?

No. The way of challenging the dominant hegemony is political activity. But we must understand a distinction that Gramsci proposed between two different kind of political strategies to achieve the capitulation of the predominant hegemony and the construction of the socialist society:

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War of maneuver:

- Frontal attack;
- The main goal is winning quickly;
- Especially recommended for societies with a centralised and dominant state power that have failed in developing a strong hegemony within the civil society (i.e. Bolshevik revolution, 1917).

War of position:

- Long struggle;
- Primarily, across institutions of civil society;
- Secondly, the socialist forces gain control through cultural and ideological struggle, instead of only political and economic contest;
- Especially suggested for the liberal-democratic societies of Western capitalism with weaker states but stronger hegemonies (i.e.: Italy);
- These countries have more extensive and intricate civil societies that deserve a longer and more complex strategy.

"The revolutionary forces have to take civil society before they take the state, and therefore have to build a coalition of oppositional groups united under a hegemonic banner which usurps the dominant or prevailing hegemony."(Strinati, 1995:169)

MERITS OF GRAMSCI'S THEORY

Every author who has studied or developed the writings of Gramsci has something different to stress from his theory; by way of illustration I have chosen some of these opinions:

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- *David Harris*: He is responsible for the emergence of a critical sociology of culture and for the politicisation of culture.
- *Raymond Williams*: The forms of domination and subordination correspond much more closely to the normal process of social organisation and control in developed societies than the idea of a ruling class, which are usually based on much earlier and simpler historical phases.
- *Paul Ransome*: Gramsci resolved two central weakness of Marx's original approach:

  - That Marx was mistaken in assuming that social development always originates from the economic structure;

  - That Marx placed too much faith in the possibility of a spontaneous outburst of revolutionary consciousness among the working class.

- *Todd Gitlin*: Gramsci's distinction of culture was a great advance for radical theories, it called attention to the routine structures of everyday 'common sense', which work to sustain class domination and tyranny.
-
- *Dominic Strinati*: Gramsci suggested that there is a dialectic between the process of production and the activities of consumption. He also displayed a lack of dogmatism, unlike some other Marxist authors.

FLAWS OF GRAMSCI'S THEORY

Dominic Strinati: From Strinati's point of view the main problem with Gramsci's ideas is his Marxist background. A class-based analysis is always reductionist and tends to simplify the relation between the people and their own culture, that is the problem of confining a social theory within the Marxist limits.

Raymond Williams: He thinks that Gramsci proposed the concept of hegemony as a uniform, static and abstract structure.

David Harris: He has mentioned that Gramsci's ideas about the role of intellectuals in society are rather elitist, and all the theory is too political and partisan to be credible. He adds later that anothe roblem of Gramsci's thought is the lack of empiricism, there is no oom for studies of audiences, surveys or something related irectly with the people and their behaviour.

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John Rawls

John Rawls, a philosopher who held the James Bryant Conant University Professorship at Harvard University, published several books and many articles. He is chiefly known, however, for his book *A Theory of Justice*, an effort to define social justice. The work has greatly influenced modern political thought.

Rawls was dissatisfied with the traditional philosophical arguments about what makes a social institution just and about what justifies political or social actions and policies. The utilitarian argument holds that societies should pursue the greatest good for the greatest number. This argument has a number of problems, including, especially, that it seems to be consistent with the idea of the tyranny of majorities over minorities. The intuitionist argument holds that humans intuit what is right or wrong by some innate moral sense. This is also problematic because it simply explains away justice by saying that people "know it when they see it," and it fails to deal with the many conflicting human intuitions.

Rawls attempts to establish a reasoned account of social justice through the social contract approach. This approach holds that a society is in some sense an agreement among all those within that society. If a society were an agreement, Rawls asks, what kind of arrangement would everyone agree to? He states that the contract is a purely hypothetical one: He does not argue that people had existed outside the social state or had made agreements to establish a particular type of society.

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Rawls begins his work with the idea of justice as fairness. He identifies the basic structure of society as the primary subject of justice and identifies justice as the first virtue of social institutions.

He considers justice a matter of the organization and internal divisions of a society. The main idea of a theory of justice asks, What kind of organization of society would rational persons choose if they were in an initial position of independence and equality and were setting up a system of cooperation? This is what Rawls sees as a hypothetical original position: the state in which no one knows what place he or she would occupy in the society to be created.

After considering the main characteristics of justice as fairness and the theoretical superiority of this approach to utilitarianism, intuitionism, or other perspectives, Rawls looks at the principles of justice. He identifies two principles: One, that each person should have equal rights to the most extensive liberties consistent with other people enjoying the same liberties; and two, that inequalities should be arranged so that they would be to everyone's advantage and arranged so that no one person would be blocked from occupying any position. From these two principles Rawls derives an egalitarian conception of justice that would allow the inequality of conditions implied by equality of opportunity but would also give more attention to those born with fewer assets and into less favorable social positions.

Rawls concludes the first part of his book by looking at the idea of the original position outside society. This hypothetical original position can be approximated by using the thought experiment of the veil of ignorance. If no one could know what place he or she would occupy in the society being formed, what arrangement of the society would a rational person choose? Rawls maintains that the choice would be for a social structure that would best benefit the unknowing chooser if she or he happened to end up in the least desirable position.

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In the second part of the work, Rawls considers the implications of his view of justice for social institutions. He discusses in detail equal liberty, economic distribution, and duties and obligations as well as the main characteristics of each that would make up a just society. He does not, however, identify any particular type of social or political system that would be consistent with his theory. He deals only with the demands that his version of justice places on institutions.

In the third and final section, Rawls deals with ends or ultimate goals of thinking about social justice. He argues for the need to have a theory of goodness, and he makes a case for seeing goodness as rationality. Then, he turns to moral psychology and considers how people acquire a sentiment of justice. Finally, he examines the good of justice, or how justice is connected to goodness. Rawls argues that in a well-ordered society, ideas of goodness and justice must be consistent with each other.

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A Theory of Justice is widely recognized as an essential contribution to thought about the nature of justice. However, even supporters of Rawls acknowledge that his work raises many questions. One of the earliest major responses to the book came from his Harvard colleague, philosopher Robert Nozick. In *Anarchy, State, and Utopia* (1974) Nozick offers a libertarian response to Rawls. The assumptions behind *A Theory of Justice*are essentially redistributive: That is, Rawls posits equal distribution of resources as the desirable state and then argues that inequality can be justified only by benefits for the least advantaged. Nozick points out that resources are produced by people and that people have rights to the things they produce. Thus, attempts to improve the condition of the least advantaged through redistribution are unjust because they make some people work involuntarily for others and deprive people of the goods a opportunities they have created through time and effort.

Other critics have focused on the idea of the original state and t veil of ignorance used as a thought experiment to approximate the original state. The claim that rational individuals behind a ve of ignorance would choose the greatest possible equality has been challenged as arbitrary and unverifiable. Rational individu might well choose a social structure with large rewards for the majority of people and small rewards for the minority on the grounds that one is more likely to end up as part of a majority than a minority. Moreover, the veil of ignorance of where one wi be in a society also takes away all knowledge of what one will d Legal justice is generally considered a matter of appropriate responses to actions: In the version offered by Rawls, justice is detached from anything that anyone has done and thus may ha nothing to do with any idea of what people deserve.

The reluctance of Rawls to identify any particular type of society as just, especially in the second part of the book dealing with institutions, may leave Rawls open to the charge that he offers n guidance for the actual content of justice. For example, proponents of a highly unequal and competitive market economy may argue that the abundance of wealth produced by their preferred system contributes to the absolute standard of living o the poorest people in society. On the other hand, advocates of a highly redistributionist economy can maintain that radical redistribution of wealth will provide the greatest support for the poorest. Because no one can know—behind a veil of ignorance which system would lead to the best possible lives for the poor, there can be no way of deciding what kind of society should be preferred.

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The fundamental idea that justice is a matter of the basic structure of society is also open to question. To say that the basic structure of society can be made just or fair is to say that it can be designed both hypothetically and actually. Some social thinkers argue that societies are not designed per se; they are produced through history and by complex webs of interaction among individuals and institutions. From this perspective, justice is a characteristic of specific acts or processes within social systems, such as legal actions or political mechanisms, and it is misleading to extend the concept of justice to a society as a whole.

Supporters of Rawls often look to revise parts of his argument, while opponents suggest alternatives. Still, most political thinkers acknowledge that *A Theory of Justice* introduced a new conceptual basis for debates about the core principles of social policy and action.

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Justice as fairness John Rawls

4. Justice as Fairness: Justice within a Liberal Society

Justice as fairness is Rawls's theory of justice for a liberal society. As a member of the family of liberal political conceptions of justice it provides a framework for the legitimate use of political power. Yet legitimacy is only the minimal standard of political acceptability; a political order can be legitimate without being just. Justice is the maximal moral standard: the full description of how a society's main institutions should be ordered.

Rawls constructs justice as fairness around specific interpretations of the defining liberal ideas that citizens are free and equal and that society should be fair. He holds that justice as fairness is the most egalitarian, and also the most plausible, interpretation of liberalism's fundamental concepts.

Rawls sees justice as fairness as answering to the demands of both freedom and equality, a challenge posed by the socialist critique of liberal democracy and by the conservative critique of the modern welfare state. Justice as fairness sets out a version of social contract theory that Rawls believes provides a superior understanding of justice to that of the dominant tradition in political philosophy: utilitarianism.

4.1 The Basic Structure of Society

Justice as fairness aims to describe a just arrangement of the major political and social institutions of a liberal society: the political constitution, the legal system, the economy, the family, and so on. The arrangement of these institutions is a society's *basic structure*. The basic structure is the location of justice because these institutions distribute the main benefits and burdens of social life, for example who will receive social recognition, who will have which basic rights, who will have opportunities to get what kind of work, what the distribution of income and wealth will be, and so on.

The form of a society's basic structure will have profound effects on the lives of citizens, influencing not only their prospects but more deeply their goals, their attitudes, their relationships, and their characters. Institutions that have such pervasive influence on people's lives require justification. Since leaving one's society is not a realistic option for most people, one cannot say that citizens have consented to the arrangement of their institutions by staying in the country. And since the rules of any basic structure will be coercively enforced, often with serious penalties, the demand to justify the imposition of any particular set of rules intensifies further.

In setting out justice as fairness Rawls assumes that the liberal society in question is marked by reasonable pluralism as described above, and also that it is under reasonably favorable conditions: that there are enough

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resources for it to be possible for everyone's basic needs to be met. Rawls makes the simplifying assumption that the society is self-sufficient and closed, so that citizens enter it only by birth and leave it only at death. He confines his attention mainly to ideal theory, prescinding from questions such as those of criminal justice.

4.2 Two Guiding Ideas of Justice as Fairness

Social cooperation in some form is necessary for citizens to be able to lead a decent life. Yet citizens are not indifferent to how the benefits and burdens of cooperation will be divided amongst them. Rawls's principles of justice as fairness embody the central liberal ideas that cooperation should be fair to all citizens regarded as free and equal. The distinctive interpretation that Rawls gives to these concepts can be seen in broad terms as a combination of a negative and a positive thesis.

Rawls's negative thesis is that citizens do not deserve to be born into a rich or a poor family, to be born naturally more or less gifted than others, to be born female or male, to be born a member of a particular racial group, and so on. Since these features of persons are in this sense morally arbitrary, citizens are not at the deepest level entitled to more or less of the benefits of social cooperation because of them. For example the fact that a citizen was born rich, white, and male provides no reason in itself for this citizen to be either favored or disfavored by social institutions.

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This negative thesis does not in itself say how social goods should be distributed; it merely clears the decks. Rawls's positive distributive thesis is equality-based reciprocity. All social goods are to be distributed equally, unless an unequal distribution would be to everyone's advantage. The guiding idea is that since citizens are fundamentally equal, reasoning about justice should begin from a presumption that all cooperatively-produced goods should be equally divided. Justice then requires that any inequalities must benefit all citizens, and particularly must benefit those who will have the least. Equality sets the baseline; from there any inequalities must improve everyone's situation, and especially the situation of the worst-off. These strong requirements of equality and reciprocal advantage are hallmarks of Rawls's theory of justice.

4.3 The Two Principles of Justice as Fairness

These guiding ideas of justice as fairness are expressed in its two principles of justice:

First Principle: Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all;

Second Principle: Social and economic inequalities are to satisfy two conditions:

a. They are to be attached to offices and positions open to all under conditions of *fair equality of opportunity*;
b. They are to be to the greatest benefit of the least-advantaged members of society (the*difference principle*). (*JF*, 42–43)

The first principle of equal basic liberties is to be used for designing the political constitution, while the second principle applies primarily to economic institutions. Fulfillment of the first principle takes priority over fulfillment of the second principle, and within the second principle fair equality of opportunity takes priority over the difference principle.

The first principle affirms for all citizens familiar basic rights and liberties: liberty of conscience and freedom of association, freedom of speech and liberty of the person, the rights to vote, to hold public office, to be treated in accordance with the rule of law, and so on. The principle ascribes these rights and liberties to all citizens equally. Unequal rights would not benefit those who would get a lesser share of rights, so justice requires equal rights for all in all normal circumstances.

Rawls's first principle accords with widespread convictions about the importance of equal basic rights and liberties. Two further features make this first principle distinctive. First is its priority: the basic rights and liberties must not be traded off against other social goods. The first

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principle disallows, for instance, a policy that would give draft exemptions to college students on the grounds that educated civilians will increase economic growth. The draft is a drastic infringement on basic liberties, and if a draft is implemented then all who are able to serve must be equally subject to it.

The second distinctive feature of Rawls's first principle is that it requires *fair value of the political liberties*. The political liberties are a subset of the basic liberties, concerned with the rights to hold public office, the right to affect the outcome of national elections and so on. For these liberties Rawls requires that citizens be not only formally but also substantively equal. That is, citizens similarly endowed and motivated should have the same opportunities to hold office, to influence elections, and so on regardless of their social class. This fair value proviso has major implications for how elections should be funded and run, as described below.

Rawls's second principle of justice has two parts. The first part, fair equality of opportunity, requires that citizens with the same talents and willingness to use them have the same educational and economic opportunities regardless of whether they were born rich or poor. "In all parts of society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed" (*JF*, p. 44). So for example if we assume that natural endowments and willingness are evenly distributed across children born into different social classes, then within any type of occupation (generally specified) we should find that roughly one quarter of people in that occupation were born into the top 25% of the income distribution, one quarter were born into the second-highest 25% of the income distribution, one quarter were born into the second-lowest 25%, and one-quarter were born into the lowest 25%. Since class of origin is a morally arbitrary fact about citizens, justice does not allow class of origin to turn into unequal real opportunities for education or meaningful work.

The second part of the second principle is the difference principle, which regulates the distribution of wealth and income. With these goods

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inequalities can produce a greater total product: higher wages can cover the costs of training and education, for example, and can provide incentives to fill jobs that are more in demand. The difference principle requires that social institutions be arranged so that any inequalities of wealth and income work to the advantage of those who will be worst off. The difference principle requires, that is, that financial inequalities be to everyone's advantage, and specifically to the greatest advantage of those advantaged least.

Consider four hypothetical economic structures A-D, and the lifetime-average levels of income these would produce for representative members of three different groups:

Economy	Least-Advantaged Group	Middle Group	Most-Advantaged Group
A	10,000	10,000	10,000
B	12,000	30,000	80,000
C	30,000	90,000	150,000
D	20,000	100,000	500,000

Here the difference principle selects Economy C, because it contains the distribution where the least-advantaged group does best. Inequalities in C are to everyone's advantage relative to an equal division (Economy A), and relative to a more equal division (Economy B). But the difference principle does not allow the rich to get richer at the expense of the poor (Economy D). The difference principle embodies equality-based reciprocity: from an egalitarian baseline it requires inequalities that are good for all, and particularly for the worst-off.

The difference principle gives expression to the idea that natural endowments are undeserved. A citizen does not merit more of the social product simply because she was lucky enough to be born with gifts that are in great demand. Yet this does not mean that everyone must get the same shares. The fact that citizens have different talents and abilities can be used to make everyone better off. In a society governed by the

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difference principle citizens regard the distribution of natural endowments as an asset that can benefit all. Those better endowed are welcome to use their gifts to make themselves better off, so long as their doing so also contributes to the good of those less well endowed. "In justice as fairness," Rawls says, "men agree to share one another's fate." (*TJ*, 102)

4.4 The Conception of Citizens

Having surveyed Rawls's two principles of justice as fairness, we can return to Rawls's interpretations of the liberal ideas that citizens are free and equal and that society should be fair. Rawls uses his conceptions of citizens and society to build his official argument for his two principles: the argument from the original position.

Rawls's interpretation of the idea that citizens are free is as follows. Citizens are free in that each sees himself as being entitled to make claims on social institutions in his own right—citizens are not slaves or serfs, dependent for their social status on others. Citizens are also free in that they see their public identities as uncoupled from any particular comprehensive doctrine: a citizen who converts to Islam, or recants his faith, will expect, for example, to retain his political rights and liberties throughout the transition. Finally citizens are free in being able to take responsibility for planning their own lives, given the opportunities and resources that they can reasonably expect.

Citizens are equal, Rawls says, in virtue of having the capacities to participate in social cooperation over a complete life. Citizens may have greater or lesser skills, talents, and powers "above the line" required to cooperate, but differences above this line have no bearing on citizens' underlying equal status.

Rawlsian citizens are not only free and equal, they are also reasonable and rational. The idea that citizens are reasonable is familiar from political liberalism. Reasonable citizens have the capacity to abide by fair terms of cooperation, even at the expense of their own interests, provided that others are also willing to do so. In justice as fairness Rawls

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calls this reasonableness the capacity for a *sense of justice*. Citizens are also conceived as rational: they have the capacity to pursue and revise their own view of what is valuable in human life. Rawls calls this the capacity for *a conception of the good*. Together these underlying capacities are the *two moral powers*.

Like every theory of justice (for example those of Locke, Rousseau and Mill), justice as fairness requires an account of citizens' fundamental interests: what citizens need qua citizens. Rawls derives his account of *primary goods* from the conception of the citizen as free and equal, reasonable and rational. Primary goods are essential for developing and exercising the two moral powers, and useful for pursuing a wide range of specific conceptions of the good life. Primary goods are:

- The basic rights and liberties;
- Freedom of movement, and free choice among a wide range of occupations;
- The powers of offices and positions of responsibility;
- Income and wealth;
- The social bases of self-respect: the recognition by social institutions that gives citizens a sense of self-worth and the confidence to carry out their plans. (*JF*, 58–59)

All citizens are assumed to have fundamental interests in getting more of these primary goods, and political institutions are to evaluate how well citizens are doing according to what primary goods they have. It is equality and inequality of primary goods that, Rawls claims, are of the greatest political importance.

4.5 The Conception of Society

Rawls's conception of society is defined by fairness: social institutions are to be fair to all cooperating members of society, regardless of their race, gender, religion, class of origin, reasonable conception of the good life, and so on.

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Rawls also emphasizes *publicity* as an aspect of fairness. In what he calls a *well-ordered society* the principles that order the basic structure are publicly known to do so, and the justifications for these principles are knowable by and acceptable to all reasonable citizens. The idea behind publicity is that since the principles for the basic structure will be coercively enforced, they should stand up to public scrutiny. The publicity condition requires that a society's operative principles of justice be neither esoteric nor ideological screens for deeper power relations: that in "public political life, nothing need be hidden." (*PL*, 68)

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Francis Fukuyama

In 1989, a year that saw the fall of the Berlin Wall and other events signifying the end of the Cold War, Francis Fukuyama published a sixteen-page article titled, "The End of History?" in *The National Interest*, a journal with a circulation of about six thousand. Surprisingly, he and his article quickly became widely known and very controversial. Policymakers and politicians both within the United States and elsewhere debated his assertion. University academics and ordinary readers of popular news magazines discussed the question Fukuyama asked. *The End of History and the Last Man* is both a response to his many critics and an elaboration of the ideas found in his original article. Arguing that the end of the Cold War and the collapse of communism in the Soviet Union and Eastern Europe left the West in sole command of the political and economic landscape, Fukuyama claims that liberal democracy and capitalism have triumphed, that there are no alternatives or remaining ideological challengers, and that history, defined as the evolving competition between political, social, and economic ideologies, has come to an end.

He begins his argument with the ideas of two nineteenth century historical philosophers, Georg Wilhelm Hegel and Karl Marx, both products of the Enlightenment. They agreed that universal history was directional and purposeful and that recent history evolved from, or was a reaction to, earlier stages of human society. For Marx, the end of history was to be the victory of pure communism, which would consequently see the withering away of institutions, such as the state and governments, that had been the product of and the means by which the economic haves controlled the economic have-nots. Hegel saw the final synthesis of history as the development of the liberal state, and Fukuyama argues that it was Hegel, and not Marx, who had the accurate vision of human historical development.

There are a number of factors that led to the victory of liberal democratic capitalism. The scientific method and the Industrial Revolution are crucial among these. With modern science, history could no longer be either merely random or cyclical. Now it could only be, Fukuyama claims, cumulative and directional. The economic system that best responds to the scientific and industrial implications of history's evolving direction is free-market capitalism. Fukuyama argues that the history of the twentieth century proves the triumphant efficiency of capitalism over socialism or communism as economic systems. Only capitalism can provide the greatest economic satisfaction to the greatest number.

Democracy is succeeding, and will be the endpoint of political evolution, because it is the only governmental system that enjoys *long-term legitimacy* from the governed (and therefore has a reserve of goodwill to carry it through temporary crises). Other governments, in particular "strong states" such as interim dictatorships, absolute monarchies, and Communist totalitarianism, have not been able to muster legitimacy:

Right-wing dictatorships (e.g. Latin America) tried unsuccessfully to control civil society and existing institutions, often justifying their existence by the need to restore order, stability, economic discipline/growth, etc. after a coup or other turbulence. But if they fail, they lose legitimacy, and if they succeed, they can no longer justify their own existence and are either more easily

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overthrown or deteriorate from the inside because of demoralization among the ruling elite.

Left-wing totalitarianism (e.g. former USSR, China) attempted to *replace* social institutions with a complete ideology, an ambitious agenda whose justification was the promise of an increased material standard of living. They have manifestly failed to provide the latter: Eastern Europe was left behind by Western Europe, and no less significantly, China was left behind by the emerging Asian capitalist powers. Tiananmen openly called into question the perceived legitimacy of the Chinese government. Cuba and Guyana remain the only Latin American countries that do not have some semblance of free elections.

Ideologies such as Nazism and Fascism, based on ethnic/racial superiority, failed because the premise was superiority thorugh military domination, which they failed to achieve (and had they succeeded, would have self-destructed because the means for justifying themselves was no longer an issue). Similarly, Apartheid failed in part because its laws based on the exploitation of black labor contradicted fundamental economic laws (e.g. "pass laws" forbidding blacks to live near their places of employment).

The only remaining alternative, and in fact the only form that has survived intact to the end of the twentieth century, is *liberal democracy*. *Liberal* systems protect the rights of individuals and the minority, including political, religious, and economic (the last of which leads directly to free-market economies); *democratic* ones assure each citizen of a voice in the political process.

Criticism

Today, it's hard to imagine Fukuyama being more wrong. History isn't over and neither liberalism nor democracy is ascendant. The comfy Western consensus he inspired is under threat in ways he never predicted. A new Cold War has broken out. China's "Marxist capitalism" suggests you can have wealth without freedom. Some critics have cited 9/11 as a major counterexample. After 9/11 Fareed Zakrya wrote that this was the end of " the end of history". Others have pointed to the rise of Islamic fundamentalism and the Arab spring as proof that ideological contests remain.

Some criticized Fukuyama personally and said that he was a neocon. He followed his mentor Paul Wolfowitz into the Reagan administration. He showed his true political colours when he wrote that "the class issue has actually been successfully resolved in the west ... the egalitarianism of modern America represents the essential achievement of the classless society envisioned by Marx." This was a highly tendentious claim even in 1989.

His reply to criticism:

He wrote recently an article named **"At the 'End of History' Still Stands Democracy"** in which he accepted that the year 2014 feels very different from 1989. He wrote: "I also now understand many things about the nature of political development that I saw less clearly during the heady days of 1989.

Russia is resurging and seeking to bully its neighbors and take back territories lost when the Soviet Union dissolved in 1991. China remains authoritarian but now has the second-largest economy in the world, as well as its own territorial ambitions in the South and East China Seas. He argued that the problem in today's world isn't just that authoritarian powers are on the move but that many existing democracies aren't doing well either. Take Thailand, whose frayed political fabric gave way to a military coup, or Bangladesh, whose system remains in thrall to two corrupt political machines. Many countries that seemed to have made successful democratic transitions—Turkey, Sri Lanka, Nicaragua—have been backsliding into authoritarian practices. Others, including recent additions to the European Union like Romania and Bulgaria, are still plagued by corruption.

However, he believes that democracy and liberalism are on the move. He wrote that in 1974 there were only 35 electoral democracies, by 2013 this number extended to 165 states. Even in communist countries such as China and Vietnam, market rules and competition dominate. He argued that the only system out there that would appear to be at all competitive with liberal democracy is the so-called "China model," which mixes authoritarian government with a partially market-based economy and a high level of technocratic and technological competence. Yet if asked to bet whether, 50 years from now, the U.S. and Europe would look more like China politically or vice versa, one would pick the latter without hesitation. There are many reasons to think that the China model isn't sustainable. The middle class of China is growing very fast and the day is not far when the people would demand their say in governmental affairs. He wrote that some people look towards Islamic khilafat as a challenge for democracy. However, the fact of the matter is that majority population of islamic world themselves do not support the system of khilafat.

He opined that my end-of-history hypothesis was never intended to be deterministic or a simple prediction of liberal democracy's inevitable triumph around the world. Democracies survive and succeed only because people are willing to fight for the rule of law, human rights and political accountability. Such societies depend on leadership, organizational ability and sheer good luck.

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Sartre's Existentialism

Existentialism

I. Absolute Individuality and Absolute Freedom.

The Existentialist conceptions of freedom and value arise from their view of the individual. Since we are all ultimately alone, isolated islands of subjectivity in an objective world, we have absolute freedom over our internal nature, and the source of our value can only be internal.

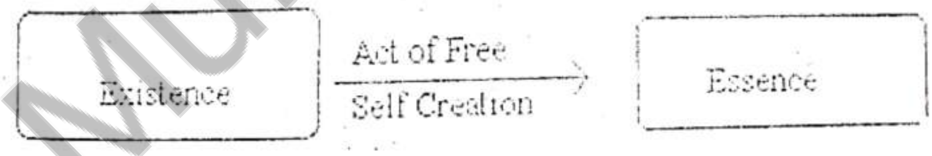
II. The Existentialist View of Human Nature.

Existentialism is defined by the slogan Existence precedes Essence. This means:

1. We have no predetermined nature or essence that controls what we are, what we do, or what is valuable for us.
2. We are radically free to act independently of determination by outside influences.
3. We create our own human nature through these free choices.
4. We also create our values through these choices.

The Existentialist View (We create our own nature.): We are thrown into existence first without a predetermined nature and only later do we construct our nature or essence through our actions.

EXISTENCE PRECEDES ESSENCE



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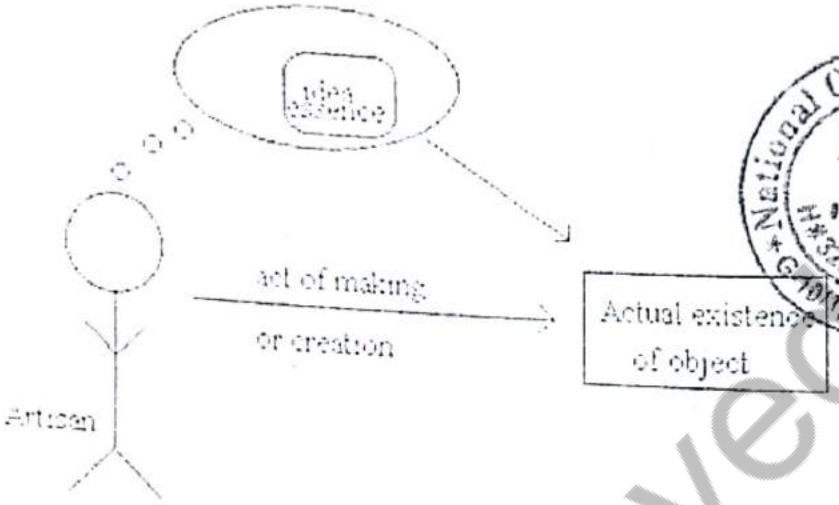
This slogan is opposed to the traditional view that Essence precedes Existence, according to which we are seen as having a given nature that determines what we are and what our ultimate purpose or value is. We are understood by analogy to artifacts which are made with a pre-existing idea or concept of what they will be and what they will be good for.

The Traditional View (which Sartre argues against):

ESSENCE PRECEDES EXISTENCE



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The human situation for the Existentialist is thus characterized by:

1. Facticity (throwness): We find ourselves existing in a world not of our own making and indifferent to our concerns. We are not the source of our existence, but find ourselves thrown into a world we don't control and didn't choose.

2. Anxiety: We are faced with the lack of any external source of value and determination. We are faced with the responsibility of choosing our own nature and values, and, in doing so, we are faced we must face the awesome responsibility of choosing human nature and values for all men in our free choices.

3. Despair: In seeing the contrast between the world we re thrown into and which we cannot control and the absolute freedom we have to create ourselves, we must despair of any hope of external value or determination and restrict ourselves to what is under our own control.

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II. The Existentialist View of Human Freedom.

What view of human nature can emerge from this view of the individual? One such view is the view of human nature identified with the name Existentialism. Sartre says that what all existentialists, both atheistic and christian, share in common "... is that they think that existence precedes essence, or, if you prefer, that subjectivity must be the starting point." (EHE, p. 13) Sartre explains what this means by contrasting it with the opposite slogan: ESSENCE PRECEDES EXISTENCE. He uses the example of a paper-cutter to explain how the old view treated human beings as artifacts, whose nature is tied to a preconceived essence and to a project outside of them, rather than as absolute individuals. He says in Existentialism and Human Emotions:

> Let us consider some object that is manufactured, for example, a book or a paper-cutter: here is an object which has been made by an artisan whose inspiration came from a concept. He referred to the concept of what a paper-cutter is .... Thus, the paper-cutter is at once an object produced in a certain way and, on the other hand, one having a specific use ... . Therefore, let us say that, for the paper-cutter, essence ... precedes existence. (EHE, pp. 13-14)

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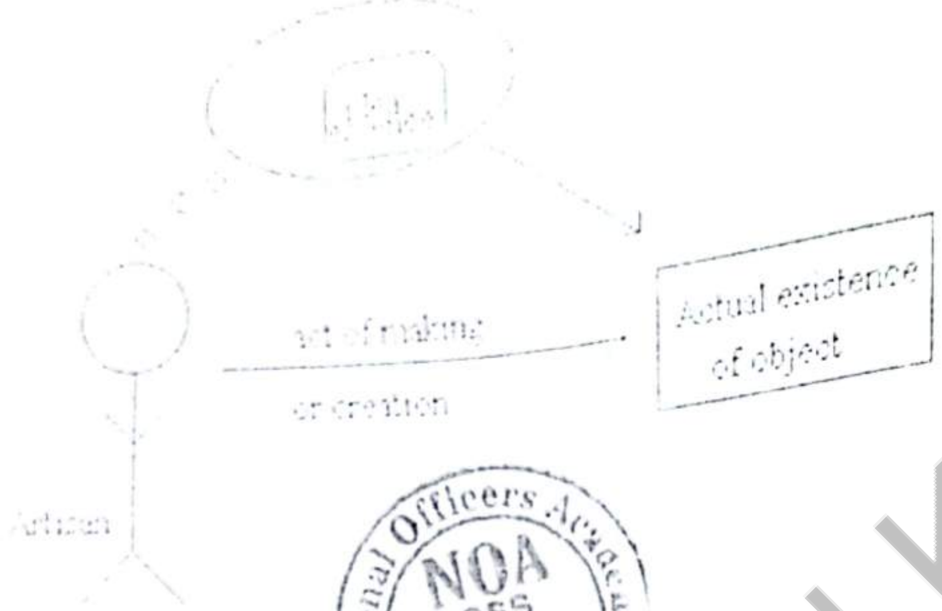

Of course, the artisan in our case is God. Sartre continues:

> When we conceive of God as the Creator, He is generally thought of as a superior sort of artisan. ... Thus the concept of man in the mind of God is comparable to the concept of the paper-cutter in the mind of the manufacturer... . Thus, the individual man is the realization of a certain concept in the divine intelligence. (EHE, p. 14)

On this view, the one Sartre is attacking, we get our nature from outside of us, from a being who created us with a preconceived idea of what we were to be and what we were to be good for. Our happiness and our fulfillment consist in our living up to the external standards that God had in mind in creating us. Both our nature and our value come from outside of us.

According to the existentialist, however, EXISTENCE PRECEDES ESSENCE. Sartre explains: What is meant here by saying that existence precedes essence? It means that first of all, man exists, turns up, appears on the scene, and, only afterwards, defines himself. ... Not only is man what he conceives himself to be, but he is also only what he wills himself to be after this thrust toward existence.

> Man is nothing else but what he makes of himself. (EHE, p. 15)

$$\boxed{\text{Existence}} \xrightarrow[\text{Self Creation}]{\text{Act of Free}} \boxed{\text{Essence}}$$

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Thus, there is no human nature which provides us with an external source of determination and value. Sartre says:

> If existence really does precede essence, there is no explaining things away by reference to a fixed and given human nature. In other words, there is no determinism, man is free, man is freedom.

Nothing outside of us can determine what we are and what we are good for; we must do it ourselves, from the inside. What we will be and what will be good for us is a radically individual matter. If we are radical individuals, there is no place else for our nature and value to come from, except from within us. It is this view of human nature, or the lack thereof, from which the existentialist conceptions of freedom and value flow.

We all tend to act in what Sartre calls 'bad faith'. We attempt to deceive ourselves and act as if we weren't free, as if we were really determined by our nature, our body, or the expectations of other people.

IV. The Ethics of Absolute Freedom.

How ought we act towards other people? If the source of our value and nature is wholly internal, what obligations can I have to other humans? Can I freely and authentically choose to kill my mother, as Orestes does? Can I choose to be a murderer, a thief, or an exploiter of humanity?

(1) First, in choosing our own human nature, according to Sartre, we choose human nature for all humans. Hence, we must choose courses of action that we would wish all humans to take. In choosing for ourselves, we choose for all men. This must be the case because, in order to act freely, I cannot allow myself to be affected by my peculiar circumstances, desires, or goals. To be free, then, I must follow the golden rule and act only as I would have others act.

(2) Sartre also argues that in order to be free, we must desire the freedom of all men. It is self-defeating to attempt to use other humans as objects to satisfy our desires, or to protect our freedom at the cost of enslaving others. If I attempt to enslave others or use them as objects, I make myself a slave and an object. The person who attempts to dominate other people finds himself a slave to his dependence on the attention and approval of the people he tries to enslave.

(3) Third, the free decisions that we make are not merely arbitrary. As we saw earlier, freedom does not mean just being able to do anything. The artist is free to create; she does not follow any explicit rules. Yet her action is constrained by the requirement that her creation must be coherent. In order to be her creation, she must pull the various disparate elements that go into the painting into one unified whole. Her freedom is a freedom of synthesis constrained by the material she has to work with and the requirement that she make some one unified thing out of it. In the same way, our actions must unify the many different influences on our lives into the one life that is to be ours. In pulling ourselves together, we cannot ignore the relationships and obligations that provide the raw materials of our lives. We must weave them into our lives, although how we will do this is up to us. Our actions, though free, are constrained by our situation in a community.

The ethics of absolute freedom, it would seem, are not absolutely free. To be free we must take on the responsibility of choosing for all men and we must desire and work for the freedom of all men.

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Capitalism

Introduction to Capitalist Economy

- A capitalist economy is an economic system in which the production and distribution of commodities take place through the mechanism of free markets. Hence it is also called as market economy or free trade economy.
- Each individual be it a producer, consumer or resource owner has considerable economic freedom.
- An individual has the freedom to buy and sell any number of goods and services and to choose any occupation. Thus a market economy has no central coordinator guiding its operation. But self-organization emerges amidst the functioning of market forces namely supply, demand and price.

The salient features of capitalism

- **Right to Private Property**: Individuals have the right to buy and own property. There is no limit and they can own any amount of property. They also have legal rights to use their property in any way they like.
- **Profit-Motive:** Profit is the only motive for the functioning of capitalism. Production decisions involving high risks are taken by individual only to earn large profits. Hence, profit-motive is the basic force that drives the capitalist economy.
- **Freedom of Choice:** The question 'what to produce?' will be determined by the producers. They have the freedom to decide. The factors of production can also be employed anywhere freely to get due prices for their services. Similarly consumers have the freedom to buy anything they want.
- **Market Forces:** Market forces like demand, supply and price are the signals to direct the system. Most of the economic activities are centered on price mechanism. Production, consumption and distribution questions are expected to be solved by market forces
- **Minimal role of Government:** As most of the basic economic problems are expected to be solved by market forces, the government has minimal role in the economy. Their role will be limited to some important

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functions. They include regulation of market, defence, foreign policy, currency, etc.

Merits of Capitalist Economy

- **Increase in productivity:** In a capitalist economy every farmer, trader or industrialist can hold property and use it in any way he likes. He increases the productivity to meet his own self-interest. This in turn leads to increase in income, saving and investment.
- **Maximizes the Welfare:** It is claimed that there is efficiency in production and resource use without any plan. The self-interest of individual also promotes society's welfare.
- **Flexible System:** The shortages and surpluses in the economy are generally adjusted by the forces of demand and supply. Thus it operates automatically through the price mechanism.
- **Non-interference of the State:** The State has a minimum role to play. There is no conflict between the individual interest and the society. The economic institutions function automatically preventing the interference of the government.
- **Low cost and qualitative products:** The consumers and producers have full freedom and therefore it leads to production of quality products at low costs and prices.
- **Technological improvement:** The element of competition under capitalism drives the producers to innovate something new to boost the sales and thereby bring about progress.

Disadvantages of Capitalist Economy

- **Inequalities:** Capitalism creates extreme inequalities in income and wealth. The producers, landlords, traders reap huge profits and accumulate wealth. Thus the rich become richer and the poor poorer. The poor with limited means are unable to compete with the rich. Thus capitalism widens the gap between the rich and the poor creating inequality.
- **Leads to Monopoly:** Inequality leads to monopoly. Mega corporate units replace smaller units of production. Firms combine to form cartels, trusts and in this process bring about reduction in number of firms engaged in production. They ultimately emerge as multinational corporations (MNCs)

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or transnational corporations (TNCs). They often hike prices against the welfare of consumer.

- **Depression:** There is over-production of goods due to heavy competition. The rich exploit the poor. The poor are not able to take advantage of the production and hence are exploited. At another level, over-production leads to glut in the market and hence depression. This leads to economic instabilities.
- **Mechanisation and Automation:** Capitalism encourages mechanization and automation. This will result in unemployment particularly in labour surplus economies.
- **Welfare ignored:** Under capitalism, private enterprises produce luxury goods which give higher profits and ignore the basic goods required which give less profit. Thus the welfare of public is ignored.
- **Exploitation of Labour:** Stringent labour laws are enacted for the exclusive profit-motive of capitalists. Fire and hire policy will become the order of the day. Such laws also help to exploit the labour by keeping their wage rate at its lowest minimum.
- **Basic social needs are ignored:**–There are many basic social sectors like literacy, public health, poverty, drinking water, social welfare, and social security. As the profit margin in these sectors is low, capitalists will not invest. Hence most of these vital human issues will be ignored in a capitalist system.

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Communism, Socialism and Marxism

Karl Marx, writing with Friedrich Engels, developed a theory of social and economic principles and a sharp critique of the capitalist form of government in the mid-1800s. Marx believed that workers, under the capitalist system of government, sold their labor and that this labor became a commodity. This commodity, or "labor power" translated into surplus value for the capitalist, but not for the worker. Marx concluded that this created an inherent conflict between the working class (proletariat) and the ownership class (the bourgeoisie). Because capitalism has this "built in" inequality, Marx argued that the working class would eventually take power over the ruling class, reconstructing society. This reconstruction would take place in stages. The next stage after capitalism, according to Marx, would be a socialist form of government.

The Economics of Socialism

Socialism advocates public ownership of property and natural resources rather than private ownership. The socialist system of government values cooperation over the competitiveness of a free market economy. Socialists believe that all people in society contribute to the production of goods and services and that those goods should be shared equally. This differs from the capitalist system in which individual efforts trump the collective and the free market determines the distribution of goods. Examples of socialist policies include a living wage, free higher education and universal health care. Advocates of socialism believe that capitalism creates vast inequality and that it ultimately leads to imperialism, a hyper-form of capitalism.

Communism: The Last Stage

The communist doctrine differs from the socialist worldview because communism calls not only for public ownership of property and natural resources, but also for the means of production of goods and services. Karl Marx argued that capitalism, with its strict adherence to free market principles, divided people because of competition. He believed communism was the solution. According to Marx, communism would give people a chance to develop into their very best. He concluded that communism was a natural progression from socialism and would occur in two stages. First, the working class would gain control of society and push the ownership class out. Second, society would evolve into a classless one without government. According to Britannica.com, Marx and Friedrich Engels defined communists in their "Communist Manifesto" as, "The most advanced and resolute section of the working class which parties every country, that section which pushes forward all others."

Marxism, Socialism and Communism Throughout the World

Many countries have adopted various forms of Marxism, socialism and communism. The former Soviet Union is the most famous example of a communist system of government, lasting from 1922 to 1991. The People's Republic of China has a communist government, although, China has developed a more mixed market economy with private ownership and state ownership of entities such as media. European countries like France, Italy and England have mixed economies with free market and socialist policies such as universal health care and free collegiate education. The United States, a capitalist mixed economy, has examples of socialist policies such as public schools, libraries and health care support in the form of Medicaid and Medicare for low income people and senior citizens.

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MUSLIM POLITICAL THOUGHT

(A History of Pre-Islamic period and Muslim Political Thought from Mediaeval ages to Modern Time)
Previously titled "SAGES OF THE AGES".

(QUESTION _ ANSWER)

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By
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Q. Write a critical note on the Theory of Imamate as expounded by al-Mawardi.

OR

"The Imamate is established to replace prophecy in the defence of the faith and the administration of the world." Elaborate this statement of Al-Mawardi with reference to his theory of Imamate.

Ans. Al-Mawardi says that Almighty Allah laid down laws in order that issues might be satisfactorily settled and the principles of right, truth and goodness may be widely known. He has also entrusted the control of His creatures to various Governments so that order and peace in the world may be maintained. He goes on to say that Imamat, which literally means leadership, is the foundation on which the rules and regulations of the community depend. Al-Mawardi describes that the real objective of the State is the rule of justice and truth and to bring tranquillity and peace to its inhabitants. He further describes that the real motive of the Imamate is following the straight path and strengthening the political bonds. Naturally, a question crops up that someone be chosen Imam by the consensus of the community for effective administration of the State. Al-Mawardi syas that Imamate is not only an institution sanctified by tradition and history but can be proved to be necessary according to pure reason; for wise men entrust their affairs to a leader able to keep them from being molested and to adjudge between them in case of mutual quarrels and squabbles.

These are the salient features of the institution of Imamate:

(1) The institution of Imamate is necessary as a requirement of the Shariah and not as a requirement of reason. The appointment of an Imam by the consensus of the Muslim community is obligatory. There is a similar passage in al-Baghdadi (*Usul-al-Din*, p. 272), who remarks that this is al-Ashari's opinion and is opposed to the Mutazilite view.

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(2) The Imamate is instituted by means of election. The electoral college shall consist of persons with the special qualifications. The qualifications are:

(a) Justice with all the conditions pertaining to it;

(b) Knowledge of religion and of the interests and policy of the nation, and

(c) Wisdom (*Al-Mawardi*, p. 4)

Also the candidates for the Imamate must fulfil certain conditions. These conditions are:

(a) Justice,
(b) learning,
(c) integrity of physical senses,
(d) integrity of physical organs,
(e) wisdom
(f) bravery and
(g) Qurayshite descent (*al-Mawardi*, p. 5)

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In this context, Rosenthal elaborates: "The Caliph be physically and mentally fit to discharge his duties as ruler, and he must possess courage and determination to protect the territory of Islam and wage holy war (*Jihad*) against its enemies and against infidels. He must also be a descendant of the Quraish. (*Political Thought in Medieval Islam*).

Ibn Khaldun who elaborates generally on these seven conditions as indicated above, goes into great detail on the question of descent. He traces its origin in the *Ansar*, the companions of the Prophet, who are credited with the *Hadith*, "The Imamate belongs to the Quraish". He cites in support the *Sahih* of Al-Bukhari, one of the authenticated collections of traditions, and discusses at great length the importance of belonging to a strong group animated by *Asabiya*, the corporate sense common to a family, clan or tribe which gives the group staying power and the drive born of a common outlook. The conference of a group is impaired by the weakening of this force to the point where common action finally becomes impossible.

(3) The election principle of the Imamate quoted above is obviously against the Shi'ite claim of bequeathal or divine nomination. Al-Mawardi, however, omits the case when a debauch and licentious person is elected as Imam. Al-Baghdadi opines that the election will be void and nullified even if it has taken place through a properly constituted electoral college. Al-Mawardi's omission is deliberate, being a concession to the Buwayhids who appointed Caliphs to suit their selfish ends.

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(4) The right of franchise is not enjoyed only by the people in the capital. The Caliph, however, traditionally elected in the capital because the death of the previous Caliph is first known there, and political considerations require the immediate appointment of a new Caliph, and because most of the people possessing the necessary qualifications for the Imamate generally reside there. This principle

was enthusiastically contended by the Khawarij who believed in complete democracy and universal franchise.

(5) Among the seven conditions which according to Al-Mawardi must be fulfilled by a candidate, the seventh one, that is, the Qurayshite descent, is very important. Al-Mawardi lays great stress on it and says that if any one raises any objection on the ground that it excludes non-Qurayshites from the Caliphate such an objection would not be considered because it was this Qurayshite descent that was presented by Abu Bakr as an argument for preference in the election of Saqifat Bani Saidah. This flimsy emphasis on the Qurayshite descent is a formidable hit on the claims of Fatimids.

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(6) The Imam is appointed in one of the two ways:

(a) he may be elected by the Electoral college;

(b) he may be nominated by the ruling Imam.

In the first case some scholars hold that Imam must be elected by all the members of the Electoral college in all the cities; others oppose this view and say that Caliph Abu Bakr was elected by the citizens of Medina. Still others assert that only five persons are sufficient to elect the Imam, as happened in the case of Abu Bakr and Usman. In Al-Mawardi's opinion even one person is enough to elect the Caliph (Al-Mawardi, p. 7). He cites the tradition of Abbas in evidence. 'Abbas said to Ali, "Stretch your hand, I will swear my allegiance to you, and when people come to know that the Prophet's uncle had sworn his allegiance to his nephew nobody would object to your Imamate. This opinion has also been corroborated by Al-Ashari (*Al-Baghdadi*, pp. 275-77).

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> In this context, Sherwani elaborates: Al-Mawardi bases his arguments by the precedent of the choice of Abu Bakr by election and that of Usman by nomination. Once the new Imam has taken his place he binds himself by an *Ahd* or undertaking promising that he would loyally perform the duties assigned to him; this is followed by the Bai'at or pledge modelled after the pledges of Aqbah, in which the people or their representatives promise to be loyal to the new Imam." (*Muslim Political Thought and Administration*).

Rosenthal also elaborates discussing the difference of opinion as to how the office of the Caliph or *Imam* is obtained and says, "Apart from election a Caliph can be chosen and invested as a result of his designation by the ruling Caliph. This is expressed by the term *ahd*, and the designated successor is styled *Wali'l-ahd,* "heir presumptive." This type of succession is again justified by historical precedent, but this time without spiritual warrant: Al-Mawardi gave two examples from the early period of Islam: Abu Bakr's designation of Omar, accepted by the Muslim *Jamaa* and Uthman's succession to Omar. The second example is strange, since Omar's appointment of six companions (the *ahl al-shura*) who were to consult each other to choose one of their members as his successor is usually claimed to constitute an election, not a designation. These two acts served Al-Mawardi as precedents to legalise the hereditary transfer of he dignity of *Imam* within the Abbasid dynasty, whose interests he promoted. The precedents are valid because they were set by the first two of the four *Khulafa-e-Rashidin* (right guided Caliphs), who are universally acclaimed as shining examples of the Ideal Muslim ruler" (*Political Thought in Medieval Islam*).

(7) Al-Mawardi says that the election of a less qualified person in the presence of a more qualified person is perfectly legal provided the former fulfils all the conditions of the Imamate. It was this principle under which most of the feeble and incapable Caliphs took refuge. It was also directed against the Shiahs, who believe that an inferior person cannot have precedent over a superior one. They coined this theory to assert that since Ali and his descendants in the Fatimid line were superior to the rest of mankind any one who assumed the Caliphal power was a mere usurper. This refutation of this dogma was essential to establish the Abbasid claim. But he is not alone in this respect, for this is the agreed opinion of Sunnite jurists and theologians.

(8) Al-Mawardi says that if there is only one suitable candidate for the Imamate, he automatically becomes the Imam, and no election is required. Other jurists and scholars are of the opinion that election must be held if there is only one candidate for it, for otherwise the Imam

cannot acquire legal status. This kind of insistence on election is apparently directed against the Shi'ite theory of divine appointment of Imam.

(9) The existence of two Imams contemporaneously is illegal (Al-Mawardi, p. 11). Al-Ashari opposes this view and says that two Imams at a time are possible if their territories are far-flang and widely separated by an ocean, which hinders easy communication between the two.

But Al-Mawardi insists in his view to rule out the Fatimids and the Umayyads of Spain.

Successions.

(1) The ruling Imam can nominate his successor. Al-Mawardi holds that there is complete consensus on this point in the Muslim community. The Muslims without any tinge of resentment or cause of rivalry accepted Umar as the next Caliph not on the suggestion of Abu Bakr but in obedience to his order as Caliph. Similarly when Umar appointed a Majlis-Shura to elect for appointment as his successor, it was an order from the Imam and there was no choice for the Muslims to show disagreement to the Caliph's orders (Al-Mawardi, p. 14).

(2) The Imam can easily nominate any suitable person as his successor, provided he does not happen to be his father or son. "The concurrence of the *Ahl-al-hall* is not necessary." (Al-Mawardi, p. 14). In case Imam nominates his father, no concurrence is required but if he nominates his son, concurrence must be obtained (Al-Mawardi p. 15). Alone, he can nominate any other relation without requiring the concurrence (Al-Mawardi, p. 15).

"According to the majority of jurists, this successor is the legitimate Imam even without the formal consent of the electors prescribed by the *Shar'*, provided always that his investiture is followed by the conclusion of the contract (*ahd*). He may or may not be a son or relative of the reigning Caliph. This is in agreement with pre-Islamic tribal practice among the Arabs. But the history of both Umayyad and Abbasid dynasties shows that sons not necessarily the first born since there is no right of primogeniture in Islam--or kinsmen were invested with the Imamate (Rosenthal: *Political Thought in Medieval*

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Mubashir Javed Khan

Islam).

Al-Mawardi fairly discusses the different opinions of the jurists whether or not the Caliph is entitled to designate one of his sons or relations as his successor and whether he acts legally in doing so. This difference of opinion reflects different attitudes to the institution of the Caliphate and to its nature. Those who recognize the absolute authority of the Caliph as head of the Muslim nation naturally concede him the right, in his capacity as ruler, to appoint a successor. Those who do not recognize the authority as absolute, justify their opposition by declaring that family considerations must not weigh with the Caliph, who is bound by law to choose one who fulfils the conditions laid down for the holder of the office of the *Imam*.

It was this theory of nomination that cut at the very root of democratic ideals in Islamic polity. It has been persistently resorted to by every Muslim ruler after the days of the Pious Caliphate, to perpetuate dynastic and despotic rule among the Muslims. Thus apparently the structure of the Caliphate was maintained by the Umayyads, the Abbasids, the Fatimids, and the Turks, but the spirit of Islamic democracy was burried in the coffin of Hazrat Ali, the last of the Pious Caliphs.

Al-Mawardi's contention that Abu Bakr's nomination of Umar could not be challenged or otherwise declared by the companions, for it was the valid enactment of a valid Imam. One of the earliest and the most reliable authorities on this period i.e Ibn Qutaybah, reports in his *Imamah wal-Siyasah* that when Caliph Abu Bakr was at the last stage of his life, his anxiety prompted him to decide as to who should succeed to the Caliphal authority. After much comtemplation he decided to nominate 'Umar to succeed him. He called Usman to his bedside and dictated to him the need of succession. When the news spread, people flocked to him from every quarter and began to question his choice. Thereupon he said, "If God asked me about this matter, I would tell Him that I appointed over them one whom I considered as the best of them." After this he ordered a general assembly of the people; and when they gathered together, he addressed them and said that he had chosen for them a person with greater qualities and then said, "If you so desire you may sit together and elect a person whom you like, but if you wish that I should use my discretion in the matter, on your behalf, then I assure you by One other than Whom there is no God, I will spare no pains in doing you the best service". He then stopped and wept and the people wept with him and said, "You are the best and most informed amongst us, so you choose for us". And when the crowd dispersed he called for Umar and gave him the deed of succession and said, "Go to the people and tell them that this is my suggestion, and asked them if they have it and obey it." Umar accordingly took that document and went to the people and addressed them. They all said, "We are all ear and obedience to it." (*Al-Imamah-wal-Siyasah*, pp. 19-23). This testimony of Ibn Qutaybah is most unequivocal and decisive. It completely abrogates al-Mawardi's theory of nomination. It is quite obvious that Abu Bakr did not deprive the people of their democratic right to elect the head of the state freely. He simply advanced his personal opinion and at the instance of the people. The people were at liberty to accept or reject the opinion. There was no political bar in their way, no caliphal decree to prevent the exercise of their right of franchise.

(3) Al-Mawardi says that the nomination of a person as heir apparent becomes effective only when he declares his consent to it. The Imam cannot withdraw the nomination until there occurs in this heir-apparent some important change which legally invalidates him. So also an Imam cannot be deposed until a similar change occurs in him (Al-Mawardi, p. 16). Now these are only logical deductions from the fundamentals of the Shariah only for there are no historical precedents to vouchsafe them.

(4) The Imam can appoint the Electoral college as well as the persons who may contest for the Imamate (Al-Mawardi, p. 21). This opinion of Al-Mawardi is based upon the election of Usman which was held by a limited Shura appointed by Umar. Whatever might have been the political considerations before Umar, the derivation of a general principle out of it is certainly most dangerous to sound polity and to the stability of a state. It is a well known fact that most of the members of the Shura who came out unsuccessful in the contest, at once started

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plotting against Usman and began to aspire for the Caliphate (Ibn Qutaybah, p. 41). But apart from this historical fact, if the right of nominating the electorate as well as the candidates is conceded to the Imam, it is bound to make him absolute and despotic. In truth it was this theory that developed into divine right with the Alids and the Abbasids. And apparently it was this theory that throttled the growth of democracy in Islamic polity.

(5) The Imam can nominate two or more heirs-apparent to succeed him one after the other. The argument has been derived from the battle of Mutah, in which the Prophet appointed Zayd bin Harithah as the Commander of Islamic forces and said that if he fell fighting he was to be succeeded in Command by Jafar bin Ali Talib who was to be succeeded by Abd-Allah bin Rawahah. If Ibn Rawah also fell in the field then the Muslims could choose any one from among themselves as their Commander. Apparently the citation of this incident in support of a fundamental issue like that of the Caliphate is but a fake reasoning (Al-Mawardi, p. 27).

This practice of appointing two or more heirs-apparent proved to be the greatest political evil in Muslim polity. This practice during the reign of Abbasids engendered palace intrigues and induced destructive internecine wars and dynastic feuds.

Designation and Privileges.

1. When a person is *duly elected* as Imam the people should entrust him all the affairs and must give him *unquestioning obedience.* The Imam may not consult *them in the affairs of state.* Yet they must obey him (Al-Mawardi, P. 27). *It is the clearest example of despotism and totalitarianism, and it certainly cannot be a principle of Islamic polity, in other words bases of democracy.*

The Islamic idea is that the people must take fuller participation in the administration of the state and their opinions for the uplift of the state and betterment of the society must be given due consideration. It was the suppression of this right that exposed the Muslim state to disruption and decay.

2. *The Imam may be addressed as the Khalifat Allah, but*

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the majority of jurists say that this title is forbidden, for no human being can represent God on earth, since man is mortal and imperfect. Hence the Imam may either be called a mere Khalifah or Khalifah Rasul-Allah. Once when Caliph Abu Bakr was addressed as Khalifat Allah he exclaimed, "Do not address me as Khalifat Allah but as the Khalifa Rasul-Allah.

Duties and Factions of the Imam. Al-Mawardi lays down the following ten principal duties to be performed by the Imam:

(1) To safeguard and defence of the established principles of religion as understood and propounded by the consensus of ancient authorities. If any one innovates an opinion or becomes a sceptic, the Imam should convince him of the real truth and correct him with proper arguments and make him obey the injunctions and prohibitions of the Shariah, so that the people at large may be saved from the evil effects of such heresies.

This is undoubtedly the main duty of the Imam under the Shari'ah. Most unfortunately, under the cover of this pretext, the second civil war of Islam was fought by the Umayyads, the Hashimites, and Zubayrites. When the Abbasids came to power they called themselves the sole defenders of Faith, and crushed every political dissentient in the name of religion, and sent many innocent souls to the gallows to save Islam. The Alids, too, have always stressed that they are the right repositories of Islam and it is only safeguarded by their Imams. When they founded the Fatimid empire and later the Safawid dynasty in Persia, they wiped out their political opponents with cruelty and butchery.

(2) The dispensation of justice and disposal of all litigations in accordance with the Shari'ah. He should curb the strong from showing harshness to the weak, and encourage the weak to take his due in the teeth of opposition of the strong.

(3) The maintenance of law and order in the country, to make it possible for the people to lead a peaceful life, and proceed to their economic activities freely, and travel in the land without fear.

(4) The enforcement of criminal code of Holy Quran to

ensure that the people do not outrage the prohibitions of God, and that the fundamental rights of men are not violated.

(5) The defence of the frontiers against foreign invasions, to guarantee the security of life and property to Muslims and non-Muslims both in the Islamic State.

(6) The organization and prosecution of religious wars against those who oppose the call of Islam or refuse to enter the protection of the Islamic state as non-Muslims. The Imam's primary duty, by the covenant of God, to establish the supremacy of Islam over all faiths and religions. The Imam must also save the religion of Islam from all innovations and heresies.

(7) The imposition and collection of Kharaj and Zakat taxes in accordance with the laws of the Shari'ah and the interpretation of the jurists without resorting to extortion or pressure.

(8) The sanction of allowances and stipends from the state treasury (*Bait-al-Mal*) to those who are needy, sick and poor and cannot afford to get their wards educated. This money must not be spent with extravagance and also must not be prepaid or delayed.

(9) The appointment of honest and sincere men to the principal offices of the state, and to the treasury to secure sound and effective administration and to safeguard the finances of the state.

(10) The Imam should personally look into and apprise himself of the affairs of his dominions so that he himself direct the national policy and protect the interests of the people. He must look into the foreign policy very carefully and sagaciously, so that relations with other neighbouring states must be cordial. Cold war must be ended so that flames of any possible war must be extinguished. The Imam should not assign his duties to someone else, so that the person or persons with delegated powers and duties must not exploit the situation resulting in bigger conflagration.

In this context, Sherwani describes in the words, "Al-Mawardi enumerates the duties of the Imam or the Caliph and says that he should protect the Faith, adjudge between man and man so that no person in power should be able to tyrannise over others,

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defend the liberty of the state, punish those who might transgress the Law, make the payment of salaries and emoluments just and regular, appoint honest and reliable men as his representatives in the land, and should never give himself up either to a life of luxury or of prayer so as to be forced to hand over the management of the realm to others." (Sherwani: *Muslim Political Thought and Administration*).

Deposition of the Imam. Al-Mawardi argues on the basis of legal deductions from the fundamentals of the Shari'ah and says that once a person is elected as Imam, he cannot be removed from that office unless there occurs some definite change in him. He says that the Imam loses his title and authority on account of one of the following reasons:

(1) If there occurs a change in his moral status, technically known as '*Adalah*' (sense of justice). The moral change occurs due to the following two factors:

(a) the one connected with his body; that is if he fields to his passions and is given over to his sensual passions and flouts openly the prohibitions of the Shari'ah. In such an event, a person can neither be elected as Imam nor can he continue as such. (Al-Mawardi, p. 3) Abu Yahya holds the opposite view.

(b) The other connected with his faith. That is, if a person holds opinions contrary to the established principles of religion, or holds such twisted opinions as amount to an abrogation of the accepted principles, he can neither be initiated as Imam nor can continue to hold that office. There is a clear denunciation of the stand of the Buwayhids, and the Shi'ite and Fatimid claims to the Caliphate.

(2) If there occurs a change in the person of the Imam, it is of three kinds:

(i) loss of physical senses;
(ii) loss of bodily organs; and
(iii) loss of ability to administer and supervise the state affairs.

(a) Among the defects which occur in the physical senses the two most important ones which preclude a person from election to the Imamate or the loss of the mental faculty and the loss of eye-sight. The first case is clear and requires no comment. But the second one has a

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profound bearing on the course of Islamic history. The practice of putting out the eyes with hot iron to prevent a person from wearing the imperial purple, was undoubtedly borrowed from the Byzantine Empire; the opinion of the Muslim Jurists on the issue, however, gave it an added importance as an instrument of tyranny. The dreadful effect of this gruesome practice can be easily judged from the fact that about twenty-four Abbasid Caliphs were thus blinded just to dethrone them from the Caliphal seat. The juridical opinion referred to above is that a blind person is unqualified to give witness or sit as a judge in a court of law; he is obviously much more unqualified to serve as the head of the state (Al-Mawardi, p. 33).

(b) Loss of bodily organs it is a physical disability. It is of various kinds. If it hinders the performance of normal duties, and does not disfigure the features or the external beauty of the body it venders as ruler disable to discharge his functions.

In certain cases when the loss of organ renders a person helpless and makes him incapable of doing anything, he can neither be elected as Imam nor continue in that office. Such is the loss of the hands and of the feet.

(c) The loss of personal ability to supervise and direct is of two kinds:

(i) If the Imam is overpowered by one of his counsellors and assistants, who appropriates all authority to himself, but does not openly defy the Imam, the Imam will continue in his office, provided the usurper rules in accordance with the injunctions of the Shari'ah and in deference to the acceptance norms of justice. This to ensure that the functions of Imamate should continue to be performed, and that the people do not fall prey to evil on account of the non-enforcement of the laws of Shari'ah. But if his conduct is opposed to the principles of religion and justice, he will not be tolerated in the status and the Imam shall have to seek the help of one who can oust the usurper and restore supreme authority of the Caliph. (Al-Mawardi, p. 38).

(ii) If the Imam falls a prisoner into the hands of a enemy, it will be the duty of the entire Muslim people to endeavour to emancipate him (Al-Mawardi, p. 38), and as long as there is any hope of his deliverance, he will continue as Imam and another person may be elected to officiate in his absence. But if all hope is lost, he will be deemed to have relinquished his office and election shall take place to elect a new Imam.

If the Imam is captured by a Muslim rebellious army, and the rebels have not appointed an Imam of their own, the captured Imam shall continue to command the loyalty of the people, and an acting Imam shall be appointed by him, if possible or by the electoral college. But if the rebels have appointed an Imam of their own the existing Imam shall forefeit his claim to the Imamate and responsible men shall elect a new Imam according to their discretion. (Al-Mawardi, p. 40).

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Q. Critically examine the theory of the State as expounded by Al-Mawardi.

OR

Describe the theory of justice as expounded by Al-Mawardi.

OR

What do you know about the theory of rebellion as expounded by al-Mawardi?

Ans. The institution of Caliphate represents the mission of Muhammad the Prophet and the main duties of the Caliph are the safeguard of religion from all destructive propaganda and innovations and the proper organization of general polity. The Holy Quran aims at creating an ideal society in which good predominantly prevails over evil and in which the laws of God are generally practised and obeyed. Further, it promises the inheritance or possession and governance of the earth to those only who follow in the footsteps of the Prophet and practise piety and do justice. The promise does not hold good if the Muslims break the covenant, that is abandon the Shari'ah in a practical life. The Quran has not defined any clear principles of state. "The meaning and idea of the constitution, the clear conception of sovereignty, the principle of franchise, the conception of human rights, and the regulations of state organization are not given anywhere." (Ahmad Amin : *Fajral-Islam*, p. 240).

political thinker, Herbert Spencer (1820-1903), nearly a thousand years afterwards, for while the latter only compares the Body Politic with the Body-Physical, Ghazzali, working under the impact of religio-ethical doctrine, derives ethical conclusions from the comparison and make solid political capital out of it.

Method of Ghazzali : Al-Ghazzali adopts the historical method about the development of the state idea. Like Mawardi and Nizamul-Mulk Tusi, he indicates numerous historical and traditional instances in his analytical study, but in contradistinct to Nizamul-Mulk, he wants to probe the truth mainly in the traditions of the Apostle of Islam, his Companions and successors. He does not rely upon the Greek, Persian or Indian stories, although these are far more frequent with him than with his predecessor, Mawardi. He is not content with putting before his mind's eye the lesson of the days gone by but actually admonishes Seljuqi Sultan that he should "hear the sayings of the kings, ponder over their doings, study their stories as related in books and try to copy their acts of justice and benevolence" (*Tibr*, p. 48).

Q. Discuss the theory of Justice as expounded by al-Ghazzali.

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Al-Ghazzali, being an original and realist philosopher, greatly emphasized for dispensing justice to the people without any creedal and religious distinctions. Our great philosopher, living in the age of kingship, warned the svereigns to extend justice to the subjects, as all worldly blessings come to an end at the time of death. He admonishes the rulers to keep the dictates of the Almighty and the deeds of the Apostle uppermost in their minds, while at the same time making it absolutely clear that it is against divine will that one should be unjust or cruel to others, laying down the noble precept that while dealing with their subjects, kings should feel in the same way as they would wish others to treat them if they had been subjects instead of kings, (*Tibr*, p. 48, beginning 'The King's Duties', duty 2). Justice, according to al-Ghazzali, is the cardinal principle for peace and order in the state. It is the natural phenomenon, and must be kept up in every phase of life. Al-Ghazzali is painfully sensitive for justice, and he emphasized that justice be practised as a salient feature in the state administration. Al-Ghazzali says that in order to acquire the quality of being the shadow of God on earth with all its implications it is necessary that the ruler should be careful that the person wronged should always be able to have his wrong righted (*Sirr*, Essay 1). He then cites the Apostolic Tradition that on the day of Judgement one of the seven sets of persons who

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would be allowed to enjoy the shadow of the Divine Throne will be the set of the kings who have done justice. The king is the vicegerent of the Devil himself (*Kimiya*, element 2, base 10) and one day of justice is equal to seventy years of continuous prayers. He indicates the following ten rules of the conduct of government, chiefly in the matter of justice, which the ruler must bear in mind :

(1) The ruler should mentally put himself in the position of the contending parties;

indiscriminator

(2) He should dispense justice without making any distinction on the basis of creed, status and religion.

[illegible]

(3) He must uphold the principle of justice and regard for the people who come to him for seeking justice.

No luxury

(4) Justice is possible only when the ruler does not indulge in luxurious food and clothing.

Advocate peace and tranq

(5) He should advocate peace, practise leniency and strive for justice and tranquillity. He must avoid all elements of harshness in his official dealings.

Rule of law

(6) He should try that the subjects should be content with the rule of Law; and he should not attempt any conciliation at the expense of the Law.

The affairs as his house affairs

(7) He should diligently supervise the affairs of the people in some way as if he were to supervise his own household affairs and should dealt with the powerful and the infirm in the same manner.

Consult with reasonable

(8) He must try to meet the men of calibre and should encourage them to have their say.

Accountability of his inferiors

(9) He should see that his servants, magistrates and other officers perform their duties diligently.

No false pride

(10) He should not be overpowered by any false sense of pride. (These and other salutary principles are embodied in a chapter devoted to the art of government, the care of the subjects and kindred matters, in *Kimiya*, el. 2, base 10. It should be borne in mind that Farabi's "Foremost Leader" bears a far more analytical frame of mind than Ghazzali's *Amir*).

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Al-Ghazzali relates how the Caliph Umar II asked the definition of justice from Muhammad bin Ka'b of Cordova, to which the *savant* rightly replied that real justice was dealing with the inferiors like a father, with superior like a son and with equals like a brother and to award punishment only according to the wrong done and the power to bear it (*Kimiya*, el. 2, base 10). He quotes Ali that the best judge is he who is not prejudiced in his decisions from

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personal desires, or by any leaning towards his relations, fear or hope, but takes a natural attitude towards all that come before him (*Tibrs*, p. 14). It is this sense of perfect justice which makes Ghazzali insist on the absolute neutrality and impartiality of the ruler in all his acts or words. The ruler must pay equal attention to everything great or small, everybody high or low, noble or downtrodden and must do away with all elements liable to create disorder and disruption in the state. Our great philosopher relates how some one once asked the great Sassanian minister, Buzurchimihr which of the kings were the greatest, to which he replied that those were the greatest, who had the confidence of the good and were the terror of the wicked. He also mentions the story of Alexander the Great, who asked the learned men how he could better his lot, to which they replied that he should eradicate both undue likings and undesirable prejudices, he should not make any decision hurriedly without counsel and should shun all personal inclinations, likes and dislikes, at the time of sitting in judgement over others, (*Tibr*, p. 60 quoted by Sherwani : *Muslim Political Thought and Administration*).

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Q. Discuss al-Ghazzali's Doctrine of Sovereignty. Also discuss his views on Democracy.

OR

What do you know about the duties and functions of the 'Amir' of Al-Ghazzali?

Al-Ghazzali, a political philosopher, renewned in East and West because of his versatile genius, harnessed his thoughts into a proper channel for an efficient and systematic government in order to bring about progress and peace in the state. He appears to be particular about the duties and functions of the sovereign, so that administration of the state must not become unwieldy and dogmatic. The great philosopher beautifully portrayed in his famous book *Tibrul-Masbuk*, functions as well as administrations of the *Amir*. He enumerates the necessary qualities of an ideal ruler, and reverently expresses that he should have intellect, knowledge, perception, right proportion of things, chivalry, love for his subjects, diplomatic bend, foresight, strong will-power and must be well-informed of the news of the day and the past history of the kings. He must learn the lesson from the past kings. He should not repeat the errors and failures of his predecessors, but instead, must make full endeavours to avoid them; and to improve what was best initiated by them. The Amir must also vigilantly watch that his judges, secretaries, viceroys and other officers did their work well; it is chiefly in these qualities, he says, which [illegible] the shadow of God on earth.

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consolidation by the existing Muslim states and improving the means of their national defence. Thus was born the Pan-Islamic ideology which has since been associated with his name. Afghani, a great defender and ardent champion of liberty, advocated strongly the emancipation from all slavish bonds, so that Muslims must develop their own ends without any fear. Afghani saw that Turkey, which was under the subjugation of Sultan, must be freed and republicanism should be enunciated. He also enlivened the Indian Muslims to forcibly snatch their fundamental rights under the banner of Pan-Islamism. He was the forerunner of Muslim Commonwealth, so that Islamic heritage so far preserved from all storms and ordeals, may be preserved without any fear of annihilation. Pan-Islamism, thus conceived and preached, was purely a defensive and psychological measure, in fact, a last ditch attempt to halt the tide of Western infiltration.

Q. Write a critical essay on the Pan-Islamic movement founded by Jamal-ud-Din Afghani.

OR

What do you know of the Pan-Islamic ideas of Jamal-ud-Din Afghani? In what way did Sultan Abdul Hamid II utilize the Pan-Islamic Movement?

Ans. Pan-Islamism, in the sense of Islamic solidarity, is as old Islam itself. The very foundation of the International Islamic Brotherhood was laid by Prophet Muhammad (peace be upon him), when he entered into a solemn pact with Medinites to defend themselves and their faith from Meccan hostility and persecution. The idea leads to the stability of Pan-Islamism "that the Muslims are all one body. If the eye is injured, the whole body suffers; if the foot is injured, then too, the whole body suffers".

Further elaborating this point, it is revealed, 'the Pan-Islamism, as its very name connotes, is a movement to rule together Muslims throughout the world regardless of their nationalities'. This movement is nothing new to the Muslimism. It is as old as the faith of Islam itself. *"Kullo Muslemun Ikhawatun"* provides a rocky base of link for the edifice of Muslim brotherhood. The Holy Prophet declared in his farewell address on the occasion of the *'Hajjat-ul-wida'* that your lives and property are sacred and inviolable one to another until you appear before your Lord, even as this day and this month are sacred for all. . . ." Furthermore, "know that all Muslims are brothers one unto another; we are all one fraternity. Nothing belonging to one of you is lawful to his brother unless given out of free good-will. Guard yourself against consolidation by the existing Muslim states and improving the means of their national defence. Thus was born the Pan-Islamic ideology which has since been associated with his name. Afghani, a great defender and ardent champion of liberty, advocated strongly the emancipation from all slavish bonds, so that Muslims must develop their own ends without any fear. Afghani saw that Turkey, which was under the subjugation of Sultan, must be freed and republicanism should be enunciated. He also enlivened the Indian Muslims to forcibly snatch their fundamental rights under the banner of Pan-Islamism. He was the forerunner of Muslim Commonwealth, so that Islamic heritage so far preserved from all storms and ordeals, may be preserved without any fear of annihilation. Pan-Islamism, thus conceived and preached, was purely a defensive and psychological measure, in fact, a last ditch attempt to halt the tide of Western infiltration.

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committing in justice."

In Medieval ages and, to be more exact, up till the dawn of the 19th century, Pan-Islamic ideas have been instructive and very natural. So Pan--Islamic movement as a definite move, including in its lap even beyond what was merely religious, grew during the 19th century. The advent of the century witnessed the penetration of European imperialism in the Islamic world and its disintegration and degradation. The ascending star of the Western imperialism had beclouded the political horizon of the East. On one side the trading East India Company had assumed the shape of an administrative body and had begun to rule in India; on the other side most of the culturally important territories of the Muslims had been seized by Russia. In Egypt the influence of the Sultan of Turkey and the Khedive himself had been almost extinct because of European intervention. Iran was being treated by the European powers as a chess-board where they were playing to outwit one another. Above all, Turkey, the symbol of Muslim brotherhood, had been called as Sickman of Europe and was undergoing a struggle of life and death, and the daggered physician of Europe was sitting on its head waiting for the last breath. It was under these circumstances that a man rose in the most backward region of the Islamic world. Afghanistan, who chose to champion the cause of Muslim revivalism and unification. That man was Jamal-ud-Din Afghani and his activities for the revivalism and unification of the Muslim world are rightly termed as Pan-Islamism.

Pan-Islamism, engineered by great scholar Jamal-ud-Din Afghani, though most often described by less authoritative sources simply as a movement to weld together the Muslims, had more than one facet. It embraced not only the centralization of the Muslims under one irrespective of his nationality but also reformism and revivalism of Islam as a great moral force, and the respective progress of various Muslim countries. The movement was immeasurably political rather than religious. Afghani stressed for political implication and provoked the collective feelings of 'Millat'. His messages were confined to no particular country and were free of all geographical bonds. His message was unlike those poineering stalwarts of liberty and reformism whose voice could never pass certain territorial limits, i.e., Muhammad bin Abdul Wahab in Arabia, Midhat Pasha in Turkey, Talaat Pasha in Egypt and Sinnusi in Libya. The Pan-Islamic movement launched by Jamal-ud-Din Afghani was defensive in its very objective and he wanted to raise it as a bulwark against the fast governing imperialism of Europe. Once determined to endeavour for the implication and revivalism of the

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Muslims he dedicated all his energies to this cause, Afghani, a champion of political freedom, combatted all forces for the sake of emancipation of Muslims from servile bonds. History has witnessed that Muslims had never been defeated by any external forces, but became victim of their own jealousies and mutual rivalries. Afghani met the same fate. He inspired the Muslims of the world with his virulent speeches to snatch their fundamental rights of liberty, and as a result, many striking movements started for the achievement of these noble ideals. This led to a greater source of inspiration for the non-Muslim races living under foreign domination. The dominators tried to root out these movements but could not succeed, because the furious waves of freedom were relentlessly destroying imperialism and colonialism. While propagating his Pan-Islamic ideas he did not ignore the non-Muslim powers of the East. He contended that the progress of any Easter country, whether Islamic or non-Islamic would contribute to the cause of Pan-Islamism which was aimed at crusading with European imperialism.

Afghani preached freedom not only from foreign rule but also and even more from the obstructive forces of rigid and worn-out beliefs and practices. He struggled for freedom of thought, and urged the open and fearless proclamation of liberal ideas. He condemned tyranny and oppression what-ever their form of source, equally denouncing Muslim rulers for betraying their trust by oppressing their subjects, and European imperialism for exploiting the peoples of Asia.

Afghani's vigorous and broad mind grasped the problems and conditions of the world around him. He deeply felt the decline of the Muslim peoples and worked for their spiritual and moral regeneration. He firmly believed that spiritual rebirth was the basis of social and cultural progress and the fundamental conditions and fuller participation once again in the creative work of civilization. Afghani was a religious reformer, an enlightened thinker, and a wise political leader. He also believed that intellectual reform was to be achieved by the liberation of the mind and its unhampered pursuit of truth. The free mind is in harmony with the world. This harmony restores balance to man, frees him of perplexity and doubt, and clears and illumines his path. And, finally, political reform would follow as a necessary sequence of a reformed mind and spirit.

Afghani had a compelling personality which impressed itself upon all who came in contact with him. His presence radiated strength and inspiration, and drew to him a large number of disciples who eagerly listened to his message. He disseminated his ideas by teaching and writing, by public conversation and discourse. Regular courses were held in his home where the Muslim classes were taught with care and affection. In these courses, he sought to broaden the intellectual horizon of the students, to open new avenues before them leading to a better understanding of the world, and to train them to seek knowledge and truth courageously. He aimed at forming thinking men, imbued with wisdom and discernment.

His move popular teaching was conveyed through talks in his home, in the houses of his friends, or in the coffee-house. None was excluded from these talks. Afghani spoke alike to the intellectual elite and equally the men of street, and all were captivated by his profound enthusiasm, strength of conviction and courage. In these discourses, as in all his works, his keynote was the achievement of freedom from bondage in all its forms. Afghani strove to create an informed public opinion, aware of its rights and duties. Such an awakened opinion would carry with it the belief in the people's right to rule themselves, and the determination to attain this right. Only then representative institutions have any meaning and significance, because they would not be the gift of the ruler bestowed from above, but well out of the conscious need of the people and their urge to share in the shaping of their destiny. Afghani greatly inspired a school of writers, who fought for freedom and liberty from foreign subjugation, and for saving Islamic culture from other's influence. Westernism and imperialism were deeply penetrated into the sacred vale of Islam and the writers relentlessly combatted all such forces working for tarnishing and weakening of Islam. Islam, the divine religion of Allah, had never been tarnished by any force in spite of the cruel efforts to do so. It remained distinct, unique and above all grue some threats. Afghani also encouraged promising young men to found newspapers and infused them with the ideas of national significance. Around him a nucleus of Arab journalism was formed and writers were trained to espouse the cause of the people and the nation.

Egyptian and Indian Modernism. It was Jamal-ud-din Afghani who sowed the seed of modernism in Egypt and his disciple Muhammad Abduh who nurtured this philosophy. A great deal has been said about the method and nature of their programme in the above lines. Here we are concerned only with them as the pioneers of modernism in Egypt. The Egyptian modernism was based on the contention that Islam should be brought in harmony with the modern age. Muhammad Abduh, like his preceptor, held that Islamic religion was not at variance with the spirit of moder science. The basic truths of both were in harmony with each other. Islam did not threat the progress of science but was conducive to the encouragement of the same. The movement based on such compromising assumptions aimed at the relief of the Muslims from hard dogma and restrictive traditions so that they may be susceptible to reformism. Generally speaking, the Egyptian modernist meant a religious rebirth and was overwhelmed by spiritual considerations.

In these respects the Egyptian modernism as a movement disagreed with modernism in India launched by rational reformers under Sir Syed Ahmad Khan. This Indian counterpart of the Egyptian modernism was first of all based on cultural reform. The very aim of the Aligarh movement was to enlighten the Muslims with modern sciences and learning so that their minds should be unshackled from superstitions. The exponents of the Indian modernism were also inclined towards the standardization of Islam on the norms of modern civilization. Saying, more compactly one was bent upon rebirth of religion, the other stressed at the cultural reformism, one was more direct and straightforward whereas the other was apologetic.

In spite of departure in method and process both the counterparts had a common element in them and that was the assumption that Islam is a universal religion and adaptable to the conditions of all nations, all times and all cultural environments. Moreover, the progenitor of the movement in both the countries opined that the English occupation and foreign influence should be encountered by compromise and peaceful means than by measuring yard as some of the leaders in both the countries firmly believed.

Q. Estimate the importance of Jamal-ul-Din Afghani in the history of political thought.

OR

Discuss the impact of Pan-Islamism enunciated by Jamal-ud-Din Afghani in the history of freedom.

Ans. Jamal-ud-Din Afghani, in the modern age, was the ardent advocate of liberty and he deeply inculcated the ideals of freedom among the Muslims living under sheer subjugation, to rise against imperialist domination, to win back their motherlands from the clutches of the usurpers. He kindled the fire of freedom in every heart; and he tirelessly worked for the attainment of his noble mission. He went to every Muslim country, met all the freedom fighters, discussed every pertinent issue for achieving freedom; and at last died of unsatiated desire for achieving his high ideals. Jamal-ud-Din Afghani wielded a profound and lasting influence upon his succeeding generations, who fought violently and won freedom. His ideals appeared in the shape of several movements and organizations who championed the cause of freedom. He was sensitive to bring all the Muslim world under one banner of Islam, and to strive collectively to root out imperialism. His conception of spiritual gravitation at one centre was completely shattered because of aggressive attitude of the Sultan of Turkey. He fell into despondency. At last he died without seeing the results of his work for the unification of the Muslims under the banner of 'Pan-Islamism.'

His influence left behind a deep impression upon the trend of literature which until his time had been mainly occupied with praising princes and rulers, however unpraiseworthy they might be. Afghani taught that the primary aim of literature was to serve the people by expressing their needs and defending their rights. Bluent's Diary is evidential to the factors that Afghani made a deep and indelible impression on the people he came across. "The letter of Shayk (Afghani) gave one," writes Blunt (speaking of his visit to India during 1882-83), "proved of the greatest possible use to me." He further writes, "I found him head everywhere in India in the highest esteem."

Causes of Failure of Pan-Islamism : These are the main causes of failure of Pan-Islamism :

(1) Sultan Abdul Hamid had also a good deal to do away with the propagation of the Pan-Islamic ideology though for his own selfish ends. He invited Afghani to Constantinople as a royal guest. After learning the visitor's views, he turned against him, and refused him permission to leave Turkey and as a result, Afghani was kept in a gilded cage (half guest, half prisoner) till his death in 1897. The Caliph of Turkey exploited the ideology of Pan-Islamism and presented it in a very different way for achieving his own designs.

(2) A death blow to political Pan-Islamism on the international basis plane was the revolt of the Arabs against Ottoman Empire. Under the Britishers' instigation, Sharif Husayn of Mecca raised the banner of revolt in the name of Arab Nationalism in 1916. The Turks had unwittingly caused a setback to Pan-Islamism when they took recourse to Jihad in support of one non-Muslim power against another, and now it was the turn of Arabs to repudiate that all to Jihad, and with it Pan-Islamism itself.

(3) Generally, the rulers for their part found Afghani dangerous. They could not tolerate a man who taught the people

look upon themselves as the source of the ruler's power and wealth, who pointed out sharply and repeatedly the tyranny of rulers and the misery and poverty of the subjects, and who urged and incited the people to emerge out from darkness into the light. The forces of darkness, native or foreign, demanded Afghani's expulsion from Egypt. The Council of Ministers, in ordering his banishment, accused him of corrupting the youth, an accusation reminiscent of the judgment passed against Socrates.

(4) The termination of his story in Egypt did not end with Afghani's work for Egypt and particularly the Arabs and generally the Muslim world. He went to Europe and stayed at Paris and started a periodical with the sole purpose to awaken the Muslims to the reality of their condition and guide them to face the realities of the age in which they lived. Particularly in Egypt, his domineering role for the attainment of freedom for the whole Muslim world was increasingly great. He greatly influenced all spheres of life in Egypt and founded Egyptian nationalism, journalism, modern literature, constitutionalism and modernism.

(5) In Khilafat Movement, Pan-Islamism joined forces with nationalism and swept the country from end to end. "Anti-British feeling", according to Subash Chandra Bose, "was stronger amongst the rest of the Indian population." Due to the political cleavage and divergence, all Muslims could not be brought under the unification of Pan-Islamism. Muslims revolted against their own brethren, clearly consuming their full energies.

(6) It is quite appropriate to say that the idea of Pan-Islamism was killed by the Muslims themselves. Evidently, the abolition of Caliphate and expulsion of Ottoman imperial family was one of the major causes of failure of Pan-Islamism. Complete liquidation of Sultanate greatly shocked the Muslims of the world particularly the Muslims of the Indian sub-continent, who had so whole-heartedly and ardently espoused the cause of the caliphate. No wonder, several writers have called the Khilafat movement as the "last outburst of Pan-Islamism" and the sub-continent its "last refuge". After this shock, they continued to show keen interest in Muslim affairs outside the sub-continent. They had considerable share in organizing the Islamic Congress held at Jerusalem in December, 1931; they espoused whole-heartedly the Arab cause in Palestine since the twenties. The Pan-Islamic spirit of theirs had also a great deal to do with the formulation of the Pakistan ideology and also with the creation of Pakistan itself.

(67)

Muslim political thoughts

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Al-farab view about state:

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(1) Nature of human being in Al-farabi's state:-

Al-farab has the opinion that human being like any other specie. have a perfect state, toward which its actions tend and this perfect state can only be achieved ~~with~~ in association with other human beings. In other words, like Arestotle, he said that man is a political animal. He said that an isolated individual cannot acheive all the perfections by himself and without the aid of many other individual. It is essential for a man to join other men in the labour he ought to perform.

(2) The concept of happiness in Al-farabi's state:-

The concept of happiness is essential to Al-farabi's political philosophy. He said that in a virtuous society and in a virtuous city, everyone cooperates to gain happiness through goodness. A virtuous world is one in which all nations collaborate to achieve happiness. He says that it is the responsibility of the ruler to form the character of the lower classes either by persuasion or by compulsion in order to make them what is necessary to achieve their happiness.

(3) Qualifications of Ruler in Al-farabi's State:-

Like Plato, Al-farabi compares the functioning

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of an ideal city to the functioning of a healthy human body. According to him, the idealized kind in Al-madina-Al-fadila (virtuous ... is an absolute ruler, who soul is united with "Active Intelect". He follows Plato in enumerating the qualities of a prince which are below:

(i) He should posses the right natural disposition and exited the right attitude for a ruler.

(ii) He should be a good orater.

(iii) He should have a strong phisique.

(iv) He must have a strong understanding and memory

(v) He should love learning and truth.

(vi) He should be above wordly meterialism:-

if thes qualities cannot found in a single man than there should be two ---- three ---- many.

(4) Herarchy in His State:-

The prince must ~~posses~~ assumes "absolute power over the state and all others are responsible to him. Citizens are also classified in terms of the power and rights they enjoy, and each takes orders from those who are above them and has the power over those who are below them.

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~~Political~~ Society of Al-Farabi

According to him, Society is either perfect or imperfect.

perfect society:-

It has three kinds:

(i) Highest:- The highest society is the whole inhabited earth coming under one political orgnization

(ii) Intermediate:- Intermidiate society is a nation occupying a specific place of the inhabited world

(iii) Lowest:- The lowest society is a city which represent a fraction of the territory of nation.

Imperfect Society:-

The village, the outskett of city and the home are the three kinds of imperfect society. These are merely steps leading to the orgnization of ~~socet~~ state.

Model State:-

Al-farabi describes the model state in these words;

Just as the whole world is ruled by the highest authority of God, Just as the human soul is one in different powers, Just as the human body

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is an organized whole moved by heart, in like manners the state is to be regulat after these manners.

In the model state there must be hierarch of rulers coming under the control of supreme head or prince.

Oppose to the model state:-

He said that oppose to the model state are the ignorant state, the perverted state and the mistaken state.

Ignorant state:-

(i) This state has no knowledge of true happiness
(ii) it has for its end the acquisition of things suc as food, cloth and shelter
(iii) It believe in false liberty by which every can do as he please (democracy)
(iv) It persues imperialism as a national polity

Perverted state:- The perveted state is simil to the ignorant state but it knows what is true happiness and perfection.

Mistaken state:- It is the state w[illegible] ideas about [illegible] and happiness.

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Al-Farabi as Aristotle and Plato:-

The political theory of Al-farabi is a mixture of Aristotelian and Platonic elements. The main Platonic element is to put the whole ~~universe~~ humanity in one universal state. For him, the existing state is not a model state. The model state with no national boundaries has not yet realized.

Furthermore, Al-Farabi tempers the ideal state of Plato with some Aristotelian elements, such as private property and the monarchic form of Government. This, however, could be easily changed to an aristocratic republic if the required intellectual and moral traits of the chief executive cannot be found in one but in few persons.

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Conclusion:-

After studying the philosophy of Al-Farabi; one come to three conclusion: first, that Al-farabi brought about the first penetration of Arabism into Hellenism and Hellenism into Arabism. Second, that Al-Farabi exert a great influence on Medieval thinker specially on Magnus and St. Thomas.

Third, that Al-Farabi improved many Aristotelian theories, Solved many problems that Are Still unsolved.

Most important Claim:-

He Claim that reason based on intellectual perception was superiour to revelation and imagnatio

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Ibn Khaldun the Father of political economy:

Ibn Khaldun has rightly been claimed as the forerunner of great many western scholars, such as Machiavelli, Bodin, Montesquieu and Hegel etc. There is hardly any western thinker with whom he might not be compared. His Maqaddamah is a work which deals with variety of subjects.

Long befor Adam Smith, Ibn Khaldun foresaw the interconnection between political and economic institutions. He made an inquiry into the various aspect of economic activities and recorded their political significance in respect of their good and bad effects on the state. He was able to discover in the middle ages the principles of social justice. He was an original economist who understood ~~pold~~ the principles of social justice and political economy and applied ~~it~~ them very skillfully, long before it was known to western thinkers.

Below are the charactristic of his theory of political economy.

(1). Role of capital labour in economy

Ibn Khaldun depicts a clear picture of the role of capital and labour in an economy. ~~His the~~ Ibn Khaldun beautifully ~~described~~ defines the term sustenance an profit. The part of economy that is obtained by an individu through his own effort is called profit. When a particula individual spends ther profit on his need then it is called substenance. He further says "If the profit obtain from something other than craft, the value of the resulting ~~product~~ profit must also includ the value of the labour, without labour it would not have been aquired. This theory of Ibn Khaldun greatly influenced Ricardo and Karl Marx. In the same way Karl Marx sayed the the power to labour is itself a commodity and it's value is fixed in the same way as that of any other commodity.

2) Condemns the role of Rulers in ~~econ~~ State economy:-

Ibn Khaldun severely criticises the engagement rulers in commercial activities because f creates hurdles in the develop ree Competetion economic Fo according to him is most essential for the circulation of wealth in the society. He said that if the rulers indulge in trade activities, they would be in an advangeous position of selling and purchasing commodities because of their political influence. Thus injustice would be brought about in the society which is a kind of economic disaster.

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Taxation policy:-

Among the economic problems, his discussion first elaborate, start with taxation. As a practical politician, he had full knowledge of ways and means to collect government's revenue. He said that taxation must be equitable and just. When equality and justice are lacking in the economic policy, the government is inviting its ruin. ~~He~~ He said that at the ~~begining~~ beginning of dynasty, taxation yealds a large revenue from small assessments and at the end of dynasty it yeilds a small ~~[illegible]~~ revenue from large assessments. He further said that decrease in pay means a decrease in revenues. The reason is that the ruler and the state are the largest ~~econom~~ comercial market in the world. If the ruler keeps back the revenue or if the revenue is not there, then he wouldnot be able to spend it. If so, then the economy of the state will be ruined. For the betterment of ~~eco~~ state's economy, ~~A~~ wealth must flow between the ruler and the ruleds from him to them and from them to him. If he holds it backs, his subjects suffer loss. He further said that that in the ~~begg~~ beginning the taxes are low but as every muslim is entitled to pay islamic taxes like Zakat, Kharj and jazya. So in the long run it will definately benificial for the state's economy.

Salaries and allowances:-

The deduction in salaries and allowances will probably decrease the incom of those from whom they buy things. That decrease the business in the state and thus lead to diminish tax revenues in ~~the~~ of the state.

He therefore disapprove such policies by the state. ~~Ibne Khaldun deals with the injustice~~ to ~~the people and is of the view that it~~ bring

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onomic-Injusticeness to the people:-

Ibne Khaldun greatly deals with economic-injustices to the people and is of the view that it ruins civilizations. Attack on people's property removes the incentive to acquire or gain property. He mentioned various kinds of economic-injustice such as, confiscation of property without a just cause; to take anybody's property on one pretext or otherand to compelled the people for force labour. Above all the great injustice is to ~~bu~~ buy the people's property at cheaper rate and to sell it at higher rate. It is most destructive to civilization. Consequently, all these tactics of the Government prove to be a death blow to the state.

Standard of living:

Here, Ibne Khaldun compare the economy of the larger cities with that of the economies of the smaller cities. He said that labour is the fundamental source of income. The larger the labour, the higher the income.

The living standard of the high populated cities are well off as compared to small popula cities. The only reason is the availability of different labour in different cities. He said that even the beggar of the larger cities beg for meat, butter, garments and for many luxurious things. While the beggars with such demands in smaller cities would be treated harshly and will be disapproved. He says that income and expenditure, balanc each other in every city. If the income is larg expenditure will be large and vice versa. If both are larger, the inhabitants are prospero and the city grows. He gives the examples of populated countries such as egypt, China, Ind Syria as being more prosperous as compared to the less small populated counteris. It is strange that today the smaller countries are more prosp than larger. However, if his conclusion is applied to the cities than it is still valid and correct.

The rise and fall of dynasties: Ibne Khaldun

Ibne-Khaldun here distinguishes five stages. A state can go to the whole cycle within the span of three or four generations of the rulers.

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1st Stage:-

In the beginning the first stage is the period of establishment. Here, a group solidarity which is based on family ties and religion play a vital role in the preservation of state. The ruler is a more a cheif than a lord or a king. He himself has to follow the rules of religion.

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2nd Stage:-

In the second stage the ruler succeeded in monopolizing power. He become an absolute master. This monopoly of power by the ruler is the natural end of the rule that began on the basis group solidar

To achieve monopolization of power, the ruler destroy those, who share power with him in the begining and also destroy the national Solidarity. He purchased the support of bureaucrates and mercenaries who are loyal to him and paid. In addition to the paid army and administrative bureaucracy, a group of learned advisers became instrument who ~~rule~~ preserve the state according to the wishes of ruler.

3rd Stage:-

The third stage is luxurious. Here the ruler use his authority to satisfy his personal Interests. He reorganises the finances of the state by to increase his own Income by lowering taxes on his subjects. This resulted in large revenues from small assessments. He then, lavishly spends on public's works and
beautification of his citi

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There is economic prosperity for everyone and all men enjoy the comforts and pleasure of the world.

In all these three stages, the rulers are powerful, independent and creative. The resulting economic prosperity, ~~added~~ constitutes an instrument of additional power for the ruler.

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4rth Stage:-

In the forth stage the luxury and comfort becomes a habit. Rulers and ruled are confident that they will last forever. Their maintainance depends upon the power and solidity of the acheiments and of the founders of the state. However, during this stage state is already starting to decline and disintegrate and the ~~Fell~~ fifth stage of waste began.

5th

It now become painfully evident that the vital forces of solidarity and religion were

Mubashir Javeed Khan

destroyed in the beginning and that the strong natural power of the kinsmen was replaced with the purchased support of the army and the bureaucracy who are not willing to sacrifice themselves for the ruler. To ensure their continued support and to maintain the luxuries the ~~t~~ ruler commits severe blunders and raises the taxes, because the ~~remaining~~ old tax policies cannot satisfy the desires of ruler. The ~~increasing~~ new tax policy discourage economic activities. in the income of state declines. Ultimately it becomes impossible for the ruler to support the new followers. The luxuries and comforts result in the ~~t~~ weakness and vice. The rough and ~~in~~courageous manners of the primitive life are forgotten. The hopes of rulers become weakened, and people refrain from making long-range planes. The entire population is physically weak and loving in large crowded cities with envoirnmental problems become subject to desases.

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The state begins to disintegrate. Even in the capital of the state, the military and bureaucracy engage in intrigues to wrest the actual authority from the ruler. Finally, an outside invasion by a young, healthy group may put an end to the life of the state, or it may decline further and further untill it withers away.

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Iqbal VS ~~Communism~~ Capitalism:-

Iqbal lived in a century in which he saw untold miseries, unprecedent ~~[illegible]~~ annihilation and political changes. due to Balkan wars, world WWI and liquidation of Automan Empire. In that century many states perished and new states emerged on the map of the world. There was nothing but human dead bodies. The enemies of Islam entirely destroyed the centre of spiritual gravitation of Muslims and they were helpless and sorrowed. Those were the circumstances that turned Iqbal to take refuge in the building of poetic pessimism. In the changed and hopeless world people accused Capitalism as the sole cause of destruction. Karl Marx's doctrine of communism deeply penetrated into capitalistic world and the poors welcomed it as the only source of their existence and solvation.

Iqbal as a social reformer, saw the fight between haves and have-nots and cried for peace and freedom on unconditional terms. As a great philonthropist, he felt great outrage at the miseries caused by capitalism, which ignores all spiritual and ethical requirements. It has reduced human beings as a marketable commodities and believed in commercial exploitation and political domination. According to Iqbal capitalism had led to imperialism and the subjugation of weaker states by the stronger. It has given birth to such a civilization that promote, greed, lust and commercialism.

Iqbal traces this greed to the complete divorce between religion and politics.

ہوئی دین و دولت میں جس دم جدائی
ہوس کی امیری ہوس کی وزیری

(As soon as religion and politics seperated, greed become the ruling power, King and minister both

He criticized the League of Nations and describe it as an association of ~~thaives~~ thieves serves as a mask for war preparations. He has the opinion that European civilization is on the way to self-destruction because it has set a bad precedent of commercial greed and national rivalries.

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[illegible] {Diesel-

And no amount of diplomacy and political strategy can create stability in a civilization resting on capitalism and Imperialism.

تمہاری تہذیب اپنے خنجر سے آپ ہی خودکشی کرے گی
جو شاخ نازک پہ آشیانہ بنے گا ناپائیدار ہوگا ۔

Your civilization will commit suicide ~~on~~ with its own dagger and the nest on a weak branch will remain unsecure and unstable.

Allama Muhammad Iqbal is quick to catch the hypocracy of the west that designed policy to overthrough the Automan Empore ~~and~~ ~~said~~: He said:

میرے سودائے ملوکیت کو ٹھکراتے ہو تم
تم نے کیا توڑے نہیں کمزور قوموں کے زجاج

[Why do you condemn my imperialistic ambitions; Have you not shattered the stregnth of many weakers

One of his finest poems, which will long endure as a revolutionary song is called « Gods commond to the Angels)) whereby he says:

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اٹھو میری دنیا کے غریبوں کو جگا دو
کاخ امراء کے در و دیوار ہلا دو۔

Go and awaken the poor and disposed of my Universe!

And shake the walls of the newly rich places to the foundation.

In another place he said:

جس کھیت سے دھقان کو میسر نہیں روزی!
اس کھیت کے ہر خوشۂ گندم کو جلا دو۔

If there is a field which yeilds no livelyhood to the peasants

Go and burn to the ground every grain of wheat in it.

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Iqbal and Communism.

During Iqbal's life some people had the opined that Iqbal was impressed from communism. They based their arguments on some verses of Iqbal that were in favour of communism and its ideology. The question arises that why Allama Iqbal has lauded Communism so much?

There are three reasons:-

(1) The first reason is psychological and political.

The Indian Sub-continent as well as other Islamic countries were under the capitalist colonial system. When the destruction of this centuries-old capitalist system started by Marx and Lenin; it naturally attracted the attention of Iqbal and lauded it.

(2) The second reason was that the defeat and destruction of capitalism would not only be the freedom of Islamic world from colonialism but that of entire world wou be free from slavery.

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Iqbal's criticism on nationalism -

Iqbal's approach to nationalism was more deep than that of democracy. As plato compared the poets with ministers of prejudice and enemies of truth, Similarlly iqbal termed the nationalists as ambassadors of conflict and discord. The lethal creed of nationalism preached by Mechiavelli, Bismark and their successors such as Hitler and Mossoline leads the world to the untold destruction of human race. Loyality to colour and race ~~used~~ and not to humanity, usually blinded the man, and made him usually narrow minded and egoistic. Politically it is rejected to dictate peoples loyality to racial and geographical factors. The territorical nationalism and agressive patriotism is not good because it militate against international outlook and disrupt the essential solidarity of mankind.

Iqbal looked at upon geographical and

racial groups as temporaral organizations responsible for all political evils and conflicts

Iqbal on Mechiavelli:-

Mechiavelli is considered the father of modern political thoughts and he was the man who preached the separation of religion from politics. Iqbal has the opinion that Mechiavelli ~~was~~ was an ardent supporter of nationalism, who raised the state to the position of an absolute deity and openely preached the subordination of moral and ethical principles to political expediency.

نسخہ بہر شہنشاہاں نوشت
در گل ما دانہ پیکار کشت

"He wrote a new code for the guidence of rulers!
And sowed the seeds of war in our clay."

مملکت را دین او معبود ساخت
فکر او مذموم را محمود ساخت

"His religion made the state into a deity!
And presented what was evil as

His views of [illegible] Nazism.

The harmful practice of subjugating all values and loyalities to the interest of a particular race or nation was vigorously revived by the reactionery political systems of Fascism and Nazism. According to Iqbal they have undermined the foundation of brotherhood and established nationality on the basis of country. They have stand a man stranger to man. According to ~~Iqbal~~ him, colour race and nationality forme trinity of destruction and in order to save humanity, they must be rooted out.

His veiws of on Islam against nationalism:-

Iqbal has ~~to~~ opined that the above forces exploit hatred and provok antagonism. On the other hand, Islam, he argued, establishes the community of mankind not on geographical accidents but on believe in on God and, consequently, in the brotherhood of man as a practical working idea.

Iqbal holds, that such an idea can act as a centrifugal force and breaks the destruction of man-kind into militant camps. Hence the Internationalism of Islam rejects all territorial ~~or~~ or racial patriotism.

قلب او از هند و روم و شام نیست
مرز و بوم او بجز اسلام نیست

Our heart is bound neither to Syria nor Turkey
its brith-place is nought but Islam!

He offers a remarkable interpretation to the migration of Holly Prophet from Mecca to Medina. This transfer of migration of the Holy prophet demonstrate that there is no room for geographical nationalism in Islam

Iqbal and Patriotism:-

It is natural that all human beings love their country because of their inseparable association with the soil. Similarly, Iqbal was a deep patriotism and he greatly loved his country. He was wrongly accused by some critics for lack of patriotism. As a matter of fact, he was so much patriotic that he wanted to see Mir Jaffar of Bengal in the fire of hell, who was a traitor of his country and sided with foriegners and helped them to deprive it of political liberty. He express this ~~fett~~ feelings in Javid-Nama.

He speaks of India in these lovely words:

خاور کی امیدو کا یہی خاک ہے مرکز
اقبال کی اشکو سے یہی خاک ہے سیراب

This is the land, sole centre of the hopes of the east!
This is the land watered by Iqbal's tears.

So it is quite clear that Iqbal was a great patriot, but when this patriotism is used in a barbarous way to gain the nation at the cost of others

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then Iqbal discarded this Ideology as a dangerous one. Our great philosopho, warns the muslims, not to imitate the West because the nationality and patriotism of West is based upon the race and Country while that of Muslim is founded on the power of their creed and religion.

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Iqbal and Internationalism:

Some critics argues, that Iqbal was inspired by a narrow type of religious enthusiasm: and he was Concerned with the welfare of the muslim world only. They say that he had no broader Sympathi which could link up the muslims with people and cultures equally grounded ~~with~~ in the broader humanism and spiritual values.

But there is sufficient evidence to contrary in the words of Iqbal himself:

"It was Islam which first gave the message to mankind that religion is neigther national nor racial, neigther personal nor private but purely human. Its aims despite of all differences, is to unify and decipline the whole humanity".

تفریق ملل حکمت افرنگ کا مقصود
اسلام کا مقصود فقط ملت آدم

(The disruption of humain is the aim of West!
The object of Islam is the unity of man.

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Conclusion:-

It is clear from the above discussion that Iqbal is opposed to Nationalism, because of his humanistic and spiritual approach to mans religious, economic and polotical problems. According to him, the concept of nationalism is destructive for humanity and will lead to the conflict among the races. His prophecy was right because after his death, the western world started the most destructive war on the basis of racial superiority.

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Iqbal philosophy of Khudi.

Throughout the history, the prophets, poets and philosophers had tried to reminal human beings of their true nature - a nature that consist of a temporal as well as a heavenly element. They have attempted to rekindle in the human beings the Divine Spark which is an integral part of their makeup. Speaking of the divine spark the Quran notes that when God created the first human being, He has breathed His own spirit into this new Creation. Consequently, the human nature is not a "human" rather it is a "humaness" that has an element of Divine in it. But after having been created in a best formation, the human being was reduced to the lowest of low (Al-Teen). Now a Question arise that whether the human individual can again rise to the original nobal hieght at which he/she was created. In 20th century, no muslim thinker was more involved in this issue than Alama Muhamad Iqbal. Iqbal formulated his theory of Khudi, in order to express his ideas on this subject. His The following verses illustrate his idea about this issue.

Why should I asked the sages about my beginning?
It is my ultimate destiny that I am really concerned about.
Rise your Khudi to such hieghts that befor every~~thing~~ decree.
God himself ask you "Tell me what is your wish?"

Iqbal's philosophy revolves around the issue of the progression of human being, or the rise of "Ego" in the direction of such ~~his~~ heights at which the Allah Almighty Himself begins to take the wishes and hopes of the human being into account before formulation his decree.

Iqbal argues that Khudi is such an entity which may appear to be perishable, but which attain immortality. The human's ego or "I" has the potential of achieving permanancy. The ego can evolve, progress and succeed as well as degenerate and fail. According to the holly Quran, "The one who causes "self" to grow in purity has attained success; and the one who is negligent of "self" is utterly faild." The human 'ego' has the ability to grow by obsurbing the elements of the Univers as well as the attributes of Allah. He says that in order to reach these noble heights of perfection the ego has to pass through three stages

i) Obedience to Divine Laws
ii) Self-Control, which is the heighest form of egohood
iii) The Vicegerency of God.

Many writers argues that Iqbal took there three stages from the Neitzshe's three stages of metomorphosis of the Spirit. Though they are seem similar to each other, yet there is difference in them. Iqbal himself warns the reader that "Neitshe does not at all believe in the spiritual fact which I have described as Khudi." Neitzshe argues that the human "I" is a fiction since it has not proved itself on intellectual grounds. But Iqbal insists that the existance of the "I" cannot be rejected just because it cannot be proven on intellectual grounds. He argues that it is because that human nature is not purely an intellectual entity - its existence is also rooted in the inner experiences.

Bradly also explains that when

beyond the constraints of purely intellectual thought and view the issue from the "Inner experience", the "I" is no longer a Fiction but a Fact.

In the light of all this discussion, the most pressing question for Iqbal is that whether the ego is reality or not and whether this weak, created and dependent ego can ~~attain immortality~~ survive the shock of death. As Iqbal argues in Asrar-e-Khudi, the human Ego can attain immortality if it adopt a certain way of life through which it can come into contact with the Ultimate Ego.

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Iqbal argues that all philosophical problems have solution in the self, but unfortunately, it is this very self which is still ignored. The reason is that people thought of the self as being a meterial entity. The reality is that ~~Self~~ humanbeing is not only a meterial being but it also contains non-meterial components. He argues that there is an element in human being that differenciate itself from bodily elements and this non-meterial element is the human soul. Togather the body and soul exist as a unit. Thus the Iqbalian self is an entity in which the body and the soul work togather. Both have to work togather in a harmonious way if the personality of the person is going to be strengthened.

According to Iqbal, the soul is that element in the constitution of human being, that can be explained only in the sense that it is a Devine spark in the human body.

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The ambiance of the Devine Light is shrouded within
this very clay

O you heedless person! You are much more than a Santien
being

Iqbal argues that when human being forgets this Spark of Devinity within, he/she falls ~~prey~~ prey to the false sense of liberty — a liberty which in reality is the worst kind of slavery. When the human being neglects the realization of Divinity within, then the Divin Spark withered away itself. This leads to an un-balanced life in which the Individual exist as an animal and loses all senses of humanity.

Moreover, Iqbal says that Khudi cannot fulfils its true potential only through the sources of Science and philosophy. According to Iqbal, it is only religion can provide us a knowledge for this purpose.

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Iqbal on democracy:

There are few factors due to which Iqbal is against the Western democracy. The factors are below.

(1) Sovereignty of people:

Iqbal criticise western democracy in a strongest possible terms. He says that by perverted democratic principles, the West has unleashed the monster. He opposed the western democracy, as it is methodology rather than an ideology or philosophy. He says that this system is not qualitative and the decisions made on the basis of quantity is not correct. He criticise the aspect of "Sovereignty of people" of the western democracy, which rests with the masses that have no capacity of the same.

جمہوریت اک طرز حکومت ہے کہ جس میں
بندوں کو گنا کرتے ہیں تولا نہیں کرتے

He believes that ~~if~~ a common man has not wisdom as well as her opinion but always dominated by the opinion of Capitalists and industrialists through the propaganda tactics. Therefor, according to Iqbal there is no difference between democracy and other kinds of despotism. In Bang-e-Dara he describe ~~that~~ the western democratic institutions as old wine in new bottles, which contain no tune other than despotism. He says that it is the demon of despotism ~~that~~ dancing in the garb of democracy and you think it is a fairy of freedom.

ہے وہی ساز کہن مغرب کا جمہوری نظام
جس کے پردوں میں نہیں غیر از نوائے قیصری۔
دیو استبداد جمہوری قبا میں پائے کوب
تو سمجھتا ہے یہ آزادی کی ہے نیلم پری

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(2) Secularism

Secularism is another aspect of western democracy due to which he hates it. It means the separation of politicspower from religion. He says that nations that believe in Secularism, cannot exist longer. In the name of ism, thousand of atrocities have been commited in the Secu world. Iqbal reports the "Satan" as saying: There is no need of presence in the world as there are enough devils in the shape of politicians in Western democracy.

جمہور کے ابلیس ہیں ارباب سیاست
باقی نہیں اب میری ضرورت تہ افلاک

Iqbal further says that the western democracy is not only irreligious but it is also designed by the capitalist for their own interests. He says that God has created one devil while West has created number of devils in the shape of democracy.

بنایا ایک ہی ابلیس آگ سے تو نے
بنائے خاک سے اس نے صد ہزار ابلیس ۔

(3) Liberalism:- The sovereignty of people and the separation of religion from politics resulted in too much liberalism, which is the basic principle of western democracy. The liberty led individual to many unethical and inhuman acts. The young generation involves itself in such activities which has destroyed the social life of human beings. Iqbal has severly criticised the liberalism in western society and says that complete liberty of thoughts led the people toward destruction. If thinking is misguided, the freedom of thought can easily converts a human into beast.

آزادی افکار سے ہے ان کی تباہی
رکھتے نہیں جو فکر و تدبر کا سلیقہ
ہو فکر اگر خام تو آزادی افکار
انسان کو حیوان بنانے کا طریقہ

(4) Capitalism - It is another characteristic of Western democracy, which means that all resources of a state are in the hands of few individuals. Individuals are independent in earning money and can use all sort of means to have unlimited property. In simple words, capitalism is decentralization of wealth and exploitation of it by F capitalists. Iqbal has felt their situation and has been deeply influenced by the tactics of capitalists and the miserable conditions of poor workers. He says that the capitalist have been victorious due to their deceitful tactics, while the workers have been ruined due to their simplicity.

مکر کی چالوں سے بازی لے گیا سرمایہ دار
انتہائی سادگی سے کھا گیا مزدور مات

Like Karl Marx
Iqbal ~~advises~~ here like Karl Marx advises the workers to realize the situation of the world, which has been changed in their favor, a new era has begun both in East and West

اٹھ کہ اب بزم جہاں کا اور ہی انداز ہے
مشرق و مغرب میں تیرے دور کا آغاز۔

(5) Nationalism -

The fifth important characteristic of Western democracy which means a feelings of group of people living in a well define geographic area, having common language and common culture and traditions. Thus the base of Western nationalism is: geography, race, language and common traditions etc. Iqbal condemns the western nations and their democracy in possible harsh terms and says that it is against the principles of

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Islam and nationalism and Islam cannot g hand in hand. He says the migration from homeland is the Sunna of Holly Prophet (P.B and be a witness to the truth of prophethood.

ہے ترکِ وطن سنتِ محبوبِ الٰہی
دے تو بھی نبوت کی صداقت پہ گواہی ۔

(b) Party system:

The party system is another corner stone of western democracy. According to the system, the like-minded people come together with the objective to be victorious at [illegible] polls, to get the political powers of the state. This groupings constitutes political party which is the part and parcel of western democracy. He criticize the party system and says that the politicians who come to power through party system, never allow the people to share the power with them like kings. Thus the politicians and the kings are defecto rulers of the world.

[illegible] غلاموں کو [illegible]
[illegible] ہیں فقط [illegible]

Iqbal concludes the discussion and says that on the surface western democracy appears radiant but its inside is darker than the despotism of Changez Khan

تو نے کیا دیکھا نہیں مغرب کا جمہوری نظام
چہرہ روشن اندروں چنگیز سے تاریک تر

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Iqbal's millet. (88)

The relationship of an individual with Society is indeed the most pertinent problem for all thinkers to mediate for a possible concrete solution. There have been two School of thoughts confronting this problem i.e Mechanistic and organic.

The Mechanistic School of thought has been supported by Aristotle, Bentham and Nietzshe. They had the opinion that individual is supreme and preferable to Society. Individual is concrete while Society is of abstract. Individual is reality while Society is an illusion. This philosophy led to Laissez Fair and divorced the religion from State.

Organic School of thought had been supported by Plato, Hobbez and Marx. They had the opinion that individual is nothing without Society. Society is an imperishable organism which has its own entity without individual. This philosophy led to absolutism, Fascism and Communism.

On the other hand Iqbal took a balanced position between these two. According to Iqbal, in Islam, Individual's interest are not against the interest of Society. Both act in a parallel way which is visible in the form of Millet. Millat, according to Iqbal, is a universal community of believers, transcending all barriers of cast, colour, language and nationality. Now a question arise that who is believer? ac According to the Holly Quran, believer is described as muslim; who surrender his will to the will of Allah; and Momin who has faith in Allah. Iqbal distinguishes between believer and non-believer and says that Unbeliever is lost in the Cosmos while the Cosmos itself lost in believer.

کافر کی یہ پہچان کہ آفاق میں گم ہے
مومن کی یہ پہچان کہ گم اس میں ہے آفاق ۔

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Iqbal advises believers to understand the World the power of Self awareness and to discover the Secrets of the world by it.

خودی کے زور سے دنیا پہ چھا جا
مقام رنگ و بو کا راز پا جا۔

Iqbal again distinguishes between believers and non-believ and says that wherever Faith is born in believer. he can Create the wings of angel Gabrail and no one can assess the Strength of believer who can changed even the Fat

جب اس انگارۂ خاکی میں ہوتا ہے یقیں پیدا۔
تو کر لیتا ہے یہ بال و پر روح الامیں پیدا۔
کوئی اندازہ کر سکتا ہے اس کے زور بازو کا۔
نگاہ مرد مومن سے بدل جاتی ہیں تقدیریں۔

The islamic Individual moves ahead and merges himself with the fellow believers to Constitute what the Holly Qur described "Millat". The focal point of Millat is when all believers surrender their wills to the well of God, subordinating themselves to Divin laws.

Iqbal says that individual's is Strong when he is remain within the bond of millet, alone he is no where; like a w in Ocean but nothing outside

فرد قائم ربط ملت سے ہے، تنہا کچھ نہیں
موج ہے دریا میں اور بیرون دریا کچھ نہیں۔

Iqbal catagorically rejects all other bond of unity, Such as race, cast nationality, Geography and accept only Millat in this regard. He says that bond of Millat was the Only way of diliverance For East but the Asian are still unaware of this. He advises the Muslims to unite themselves from the bank of Nile to the of Kashgar to protect the "Haram".

ربط و ضبط ملت بیضا ہے مشرق کی نجات
ایشیا والے ہیں اس نکتے سے اب تک بے خبر
ایک ہوں مسلم حرم کی پاسبانی کیلئے
نیل کے ساحل سے لیکر تابخاک کاشغر

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He says that if Muslims believes in discrimination on the basis of colour, they will be ruined.

نسل اگر مسلم کی مذہب پر مقدم ہوگئی
اڑ گیا دنیا سے تو مانند خاک .

Factors leading to an Ideal Millet:-

(i) Believe in the unity of Allah and prophethood.

Iqbal says that the unifying element of muslim all over the world is their monotheism and their belief in the prophethood of Muhammad. Keeping in view this thing, all muslims have a common heritage, common joy and sorrow and common brotherhood. The Muslims wheather from Hijaz, china or Iran are like a the dews of the same morning.

از حجاز و چین و ایرانیم ما
شبنم یک صبح و خندانیم ما.

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(ii) Hatred of Nationalism:

Iqbal believes that hatred of Nationalism also forges the islamic individual into Millat. His reasons for opposing nationalism are islamic as well as human. The principles of nationalism are against Islam and

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Islam and nationalism cannot go together. He that migration from homeland is the Sunnah of the Prophet (P.B.U.H) and be a witness to the truth of

ہے ترک وطن سنت محبوب الٰہی
دے تو بھی نبوت کی صداقت کی گواہی ۔

(iii) Millet above race and creed.

He believes that Millet is above all race and creed, Colour and nationality. He advises the Muslims to merge themselves into a Millat, breaking all idols of colour and blood, because the Turanian, Iranian and Afghan have lost their past glories.

بتان رنگ و خوں کو توڑ کر ملت میں گم ہو جا!
نہ تورانی رہے نہ ایرانی نہ افغانی ۔

(IV) Respect and recognition of Individual:-

Millet is a great blessing for individual, because it is a Community alone in which an individual develops all his qualities of head and heart. Individual get respect and recognition only by being a member of Millet. He says that is reality while individual is an illusion. He says that one should his relations with the Millet in order to aquire greater strength and

ملت کے ساتھ رابطہ استوار رکھ
پیوستہ رہ شجر سے امید بہار رکھ ۔

(V) Force:- Force is the basic factor for an ideal umma' and muslims attain force which is life for Millat. Islam has made Jihad compulsory for Millet and Jehad is declared an obligation for every islamic individual. He entered in controversy with Qadianis over this topic. Mirza had declared that this is the age of 'pen' not of "sword" and sword had become useless. He addressing Mirza, is war prohibited in East and not in West.

فتویٰ ہے شیخ کا یہ زمانہ قلم کا ہے
دنیا میں اب رہی نہیں تلوار کارگر
ہم پوچھتے ہیں شیخ کلیسا نواز سے

Mubashir Javed Khan
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Ideology of Muhammad Rashid Rida

Muhammad Rahid Rida was an early Islamic reformer, whose ideas would later influence 20th-century Islamist thinkers in developing a political philosophy of an "Islamic state". Rida is said to have been one of the most influential and controversial scholars of his generation[4] and was deeply influenced by the early Salafi Movement and the movement for Islamic Modernismfounded in Cairo by Muhammad Abduh.[5][6]

Rida's philosophy evidently represented a transition from the modernist, rational, liberal and reformist tradition represented by Muhammad Abduh and Jamal al-Din Al-Afghani to the radical, violent, reactionary, racist and Muslim supremacist philosophy of Hassan al-Banna and Sayyid Qutb.

Following the death of 'Abduh's in 1905, Rida came to be regarded as the leading disciple of Abduh and exponent of Islamic reform, after he published an extensive biography of Abdu. He also continued the Tafsir (commentary) of the Quran begun by Abdu. Most of Rida's energies were focused on publication of al-Manar. However, he also wrote at length, both in Al-Manar and various books.

Despite extensive actual departures from Abduh, Rida's ideas were viewed as a legitimate continuation of 'Abduh's thought, and a pathway for reinvigorating Islam and demonstrating its compatibility with modernity.

In common with Abduh and Afghani, Rida blamed Muslim decline on the *Ulema* (Muslim authorities),excesses of some Sufi sects which were opposed to political involvement(apparently he joined the Naqshbandi Sufi) and *taqlid* (imitation of previous jurists), and abandonment of what he considered the original Islamic writ. Like them, he called himself a *Salafi*, in the sense that he wanted to return to "first principles" as he saw them, and reinterpret Islam

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according to reason and first principles. He was convinced that the "correct" Islam lay not in the pronouncements of the Ulema of al-Azar and other prestigious places, but rather in the rulings of village elders and notables such as his own family.

But Rida diverged from Abduh and Afghani in very significant ways. Rida was, or became a pan-Arab advocate as much or more than a pan-Islamic advocate and used al-Manar to promote pan-Arabism with an Islamist slant. During and following World War I, he opposed the breakup of the Ottoman Empire because he correctly foresaw that it would mean the end of the Caliphate, and he likewise opposed the British sponsored Pan-Arab movement of Feisal, especially when it was defeated in Damascus.(ref)

Rida's version of *Ittihad* - Islamic unity - called for a Caliphate as Maududi had. Rida was profoundly affected by the dissolution of the Caliphate by Mustafa Kemal Ataturk. He believed that the abolition was part of a conspiracy by the west to sow disunity among Muslims and weaken them. He cited Lord Cromer as stating the unity of Muslims was a challenge and a source of resistance to the forces of the Christian countries and that it had to be watched carefully (Dawoody, Ahmad Mohsen al-, The Intellectual Repercussions of the Abolition of the Caliphate in Egypt, unpublished MA thesis submitted to Leiden University, 1999, p. 25.)

Rida's caliphate would be be a collection of states, with a supreme Mujtahid to rule as an expert on matters of religion, with the consensus of a Shura council (Zubaidi, 1989, p. 15). As Bassam Tibi points out, (Tibi, p. 153) and as others have pointed out (especially Raziq), there was no Caliphate in the time of Muhammad, and the Caliphate as such is not mentioned in the Quran (the word Khilafah appears, but in another context). Therefore there is a contradiction between the supposed return to

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"first principles" on the one hand, and the insistence on a Caliphate or Islamic rule on the other.

Rida identified many defective Muslim traditions with "*Israiliyyah*" - traditions that were supposedly inserted into Islam by converted Jews, and that were therefore suspect. Both from his early life history, in which he abandoned a Turkish school for an Arabic language one, and from his writings, it is apparent that Rida advocated Arab supremacy within the Islamic world. In his Fatwa against the translation of the Quran, he argued that parts of the Quran were untranslatable, and that only Arabic speakers could fully comprehend it. Translations of portions of the Quran could be made for those who required it for ritual purposes. However, a translation would produce a variant meaning. He explained:

The Qur'an prohibited *taqlid* [imitative reasoning] in religion and denounced the imitators. Deriving [the rulings of] religion from the translation of the Qur'an is an imitation of its translator, so it is a deviation from the guidance of the Qur'an and is not in accordance with it.(Al-Munajjid and Khuri, Fatawa al-Imam Muhammad Rashid Rida, Dar al-Kitab al-Jadid, Beirut, 1970, vol. 2, pp. 642-650. Tr by Mohamed A. M. Abou Sheishaa ref)

In theory, at least, Rida's philosophy was liberal. He pleaded for Ijtihad (innovation). He stressed that Islam is based on reason and claimed that the Islamic Sharia is founded on the basis of Ijtihad. Without Ijtihad, in his view, Islam could not adapt and could not be an an eternal religion. Thus, anyone who is opposed to Ijtihadis undermining the basis of Islam and of Sharia. "What a heinous crime is being committed, then, by these ignorant persons who call themselves the Ulema of Islam," he wrote. (Tafsir al-Manar vol. IV Cairo, 1375 (1956) p.240). The call for perpetual and free Ijtihad could hardly sit well with Sunni Ulema who believe that the gates of Ijtihadare closed, and especially not with traditional Salafi theologists.

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In apparent contradistinction to those who view Islam as prescribing a whole way of life to the smallest details, Muhammad Rashid Rida claimed that Islam gave great liberty to order the affairs of every day life. Islam requires that issues should be settled by consultation, The restrictions on Ijtihad placed by the ulema are not warranted, according to him. (Tafsir al-Manar vol. V Cairo, 1374 (1955) p.189).

Rida must have been among the first to become aware of Zionism and to warn of the dangers of Zionism as he saw them. In 1898, he wrote in *Al Manar*:

> Apathetic people, lift up your heads and see what is happening. Consider what people and nations are doing...Does it please you that the newspapers around the globe are reporting that the impoverished of the most miserable people [the Jews] whom all governments are expelling from their countries, have so mastered knowledge and civilization that they can come to your country, colonize it and transform its masters into wage laborers and its affluent men into paupers... Ponder this problem [Zionism] and make it the subject of your conversations, to ascertain if it is just or unjust, true of false. If it is clear that you have neglected to defend the rights of your fatherland and the interests of your nation and your religious community, ponder and study, debate and examine the matter. It is a worthier subject for consideration than focusing on shortcomings, spreading slander and insulting the innocent. It is more worthy of discussion than ridiculing and accusing your [Muslim?] brothers. (Rida, Muhammad Rashid, *Khabar wa itibar* (News and Views) al-Manar (April 9, 1898), p 108)

His Controversies:

One of his controversial views was his support of Darwin's theory of evolution. To justify Darwinism, Rida considered it permissible to "interpret certain stories of the Qur'an in an allegorical manner, as, for example, the story of Adam.". He also believed that the origin of the human race from Adam is a history derived from the Hebrews and that Muslims are not obliged to believe in this account.

Other controversial beliefs held by Rida included:
- His view that usury (riba) may be permitted in certain cases
- His idea that building statues is permissible in Islam as long as there is no danger of their being devoted to improper religious uses.
- His support of the British against the Ottomans
- His view that "the minute living bodies which today have been made known by the microscope and are called microbes, may possibly be a species of Jinn

Works by Muhammad Rashid Rida

Tafsir al-Qur'an al-Hakim known as *Tafsir al-Manar* (Continuation of the commentary on the Qur'an begun by 'Abduh. Rida continued up to *surat* Yusuf XII, verse 100)

Al-Tafsir al-Mukhtasar al-Mufid (Intended as a summary of the Tafsir, begun by Rida and published by Muhammad Ahmad Kan'an and Zuhayr al-Shawish as *Muhktasar Tafsir al-Manar*, 3 vols, Beirut-Damascus, 1984)

Al-Manar Journal (The first volume was published in 1315A.H. [1898], the second section of the last volume (volume 35) was published and distributed after his death on 29th Rabi' II, 1354/1935)

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Tarikh al-Ustaz al-Imam al-Shaykh Muhammad 'Abduh (A biography of his teacher published in three volumes)

Nida' lil Jins al-Latif or *Huquq al-Mar'ah fi al-Islam*)"A Call to the Fair Sex" or "Women's Rights in Islam").

Al-Wahy al-Muhammadi (Rational and historical proofs that the Qur'an is a Divine Revelation).

Tarjamat al-Qur'an wa ma fiha min Mafasid wa Munafat al-Islam, Matba'at al-Manar, Cairo, 1344/1926.

al Naqd Dhikra al-Mawlid al-Nabawi (Summary of the Prophet's biography and the foundations of Islam al-Manar 20, 1336/1918).

Al-Wahda al-Islamiiyya ([Islamic Unity]. Most of this work was first published under the title *Muhawarat al-Muslih wa al-Muqallid* ["Debates between the Reformer and the Imitator"])

Yusr al-Islam wa Usul al-Tashri' al-'Amm ("The Accommodating Spirit of Islam and the Sources of General Jurisprudence" published in 1928.)

Al-Khilafa wa al-Imama al-'Uzma ("The Caliphate and the Greater Imamate" Cairo, Manar Press.)

Al-Sunna wa al-Shari'a ("The Prophetic Tradition and Islamic Law")

Al-Muslimun wa al-Qibt ("Muslims and the Copts")

Al-Wahhabiyyun wa al-Hijaz ("The Wahhabites and the Hijaz")

Al-Manar wa al-Azhar ("Al-Manar and al-Azhar"]+

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Rashid Rida In short notes:

Syrian Islamic revivalist, reformer, and writer. Lived in Egypt from 1897 until his death. Close associate and disciple of Muhammad Abduh . Published the journal *Al-manar* to articulate and disseminate reformist ideas and preserve the unity of the Muslim nation. Concerned with the preservation of Muslim identity and culture. Viewed original Islamic sources—the *Quran*, Sunnah, and ijma (consensus) of Muhammad 's companions—as the basis for reform. Believed that matters of worship (ibadat), intended to organize human behavior, were revealed in the *Quran* and authentic hadith, making them unchangeable. Human relations (muamalat), in the absence of an explicit, authentic, and binding text, can be reinterpreted according to the interest of the community (maslahah). Ijtihad (independent reasoning) is to be exercised to achieve the common good of the Muslim community. Believed the decline of the Muslim nation was due to the stagnation of scholars and tyranny of rulers. Viewed European dominance over Muslims as a result of Muslim weakness due to a lack of mastery over the sciences, an inability to form organized political institutions, and a lack of restrictions on the power of government. Considered education a precondition for political reform and independence. Urged Muslims to acquire the commendable aspects of Western civilization, such as science, technical skill, and wealth. Tried to combine modern education with religious teachings. Supported revival of the caliphate as essential to the unity and coherence of the Muslim community.

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Political Science

Theory and Practice

Shah Zeb

Section -(J)

by

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people into outputs or decisions of the political authorities. It is a structural functional subsystem of the society, which is its environment, from which it derives its resources in order to satisfy the demands of the people. However, the environment also includes several political and social subsystems. The political subsystems are political parties, interest or pressure groups, etc., while the social sub-systems are the families, religious communities, cultural associations and clubs, educational institutions like schools, colleges, universities, etc., commercial, industrial and other economic organisations like the factories, farms, trade unions, corporations, etc. All these political and social sub-systems are the sources of the demands which their members, or people, make on the government and also provide supports to it.

Political Systems and its Sub systems:

As we have said above, a political system is a sub-system of a larger political system, while, in its turn, it has a number of sub-systems and sub-systems of subsystems. It has been calculated that there are, at least, four levels of political systems and their subsystems. They can be hierarchically arranged as below:

First Level	International Political System
Second Level	National *Political Systems,* e.g. Pakistan, China, Iran, Egypt, Algeria, France, Great Britain, Holland, Canada, USA, Mexico, Brazil etc.
Third Level	Decision-making sub-system; e.g. governments, political parley (sub-system) Interest or pressure Group (Sub-system)
Fourth Level	he individual, as a voter, etc., with his/her interests, demands and supports.

First level: the International Political system. It can be divided, at second level, into several national political systems, such as those of Pakistan, India, China, USA, USSR, Great Britain, France, Saudi Arabia, UAE, etc. There are nearly 160 national political systems or national States in the world today. Thirdly, each of the national political system can be divided into such subsystems as decision-making system or government, party system, etc. Finally, each of the political sub-systems consists of several individual men and women, as voters or participants in political activities. Each individual has his or her interests, attitudes, beliefs, values, etc. They link him or her with a political subsystem and national political system, on the one side, and with other social or economic, and other sub-systems and systems, such as a family, a school, an office, a shop or a workshop, a factory, farm, religious group or community and so on and so

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forth. Thus every man, woman and child is embedded in a vast political and social systems of his State and society.

Types of Political Systems:

In the world today, there are several types of political systems. They are differentiated from each other on the basis of the principles of (i) democracy and (ii) modernity. A political system is said to be democratic if its political subsystems, like political parties or interest groups, enjoy autonomy with regard to the decision-making governmental system. If not, it is a non-democratic political system. The second criterion means that a political system has modernised its social and economic systems. If not, it is a traditional political system. Hence there are four types of political systems, as under:

1. Traditional non-democratic political system:

It is a political system in which the traditional forms of social life, such as castes, and clans, still exist and dominate the decision-making governmental system. Such political systems existed in the ancient times in Asia, Africa and Europe. They were either tribal chieftainships, or monarchies, in which the kings or emperors were autocrats or despots. But they ruled with the support of powerful tribes and clans while the rest of the population did not participate in the governmental decision-making activities, as for examples the ancient Persian Empire or the Mughal Empire in medieval India. In modern times, such political systems have virtually vanished. Still a few examples are found in such States as Ghana, Uganda, Saudi Arabia, etc.

2. Traditional Democratic Political System:

In this type of political system, the governmental decision-making system is democratic; at least, constitutionally speaking, and the political sub-systems, like political parties, etc., enjoys constitutional freedom to participate in politics and possess political autonomy to do so. But they are really dominated by such traditional kinship groups as castes, tribes, local *baradaries,* etc. The result is that though the governmental structure is democratic, but it operates in the interests of powerful traditional groups. Examples are mostly found in the Third World countries, such as Pakistan, India, Iran, Iraq, Syria, Egypt, etc. India's case is very interesting. It claims to be "the biggest democracy in the world", but it is a democracy of dominant Hindu high castes, such as the Brahmin, *Bania*, etc. A Hindu businessman has aptly remarked, "India's constitution may be secular but India will always be a theocracy." It means the Indian political system is a rule of the priestly class of the Brahmins for the sake of the Indian Bania or middle classes. Even the rapid industrialization of India will not make it a

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modern democratic State, due to such new forces in Indian politics, as the rise of Hindu Fundamentalist and Communalist groups and parties, like, *Shiv Sina*. Etc.

3. Modern Non-democratic Political System:

The modern non democratic political system is really a new type. It came into being with the rise of modern dictatorships, whether fascist, Nazi, communist, military or nationalist. In this type, the political and social sub-systems possess no constitutional, even legal, right and autonomy to share in the political process of governmental decision-making. All powers are in the hands of the dictator and his group or party. This type is of two varieties: authoritarian and totalitarian. If the dictator uses modern means to maintain his sole absolute authority, the type is authoritarian, e.g. Nasser's Egypt. But if the dictator exercises his authority over all sphere of national life and society, whether political, social, economic, cultural, educational, intellectual, academic, etc., the type is then totalitarian, e.g. Nazi Germany, Soviet Union, Communist China, and other communist States. However, the communist totalitarian type is changing at present due to such programmes as glasnost (openness) and *perestroika* (Restructuring), as in the Soviet Union, which may change it into a modern democratic political system.

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4. Modern Democratic Political System:

This type of political system is modern and democratic. It is modern because of its high level of industrialism, pluralist society, autonomy of the social and political sub-systems, such as political parties, interest groups, etc. It is democratic because of freedom of political participation for all citizens and groups by means of right to vote to elect the decision-makers. This type is "the wave of the future".

Can one type of political system change into another? Most of the behavioural political scientists are of the opinion that no political system can change from one type into another. They believe that every political system is unique. It is neither produced by any other type of political system, nor does it give rise to any other. In other words, it has neither history, nor evolution. However, some political scientists believe that there is some change in every political system, for instance, Gabriel Almond has expounded a theory of development in a political system, which we shall discuss in a later section of this chapter.

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Two Well-known Political systems Analysts:

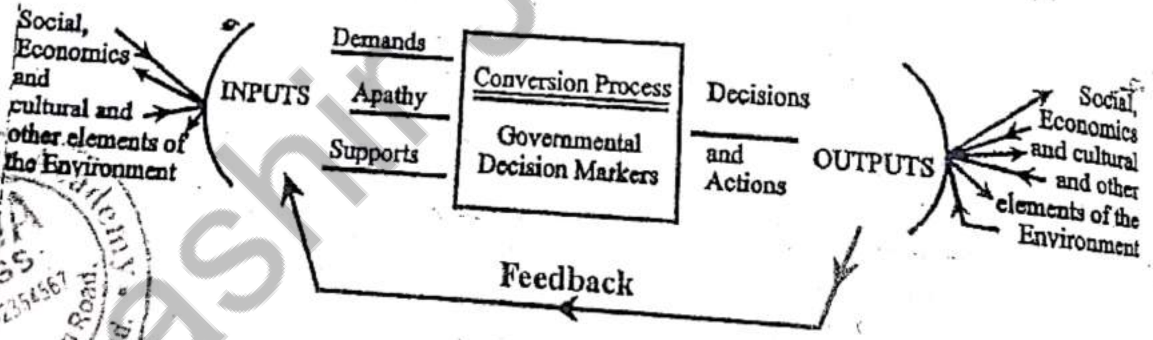
David Easton and Gabriel Almond:

Since 1945, many political scientists, at first mostly Americans, have adopted the systems approach to the study of politics. Among them, two are most prominent, namely David Easton, who "was, in fact, the first to do so, and Gabriel A. Almond, who further elaborated it. We shall first discuss David Easton's analysis of the political system, and afterwards that of Gabriel A. Almond's.

David Easton and his Systems Analysis:

David Easton was the first American political scientist to apply systems analysis to politics in his book, The Political System, which he wrote in 1953. He continued to discuss the systems approach in his later books: A Framework for Political Analysis and A System Analysis of Political Life, both written in 1965. He claimed that his systemic theory embraced all the social systems as well as the whole political process. Since 1953, David Easton became one of the prominent exponents of the "general systems" approach to Political Science. He was one of the few who came from within this discipline rather than from other social sciences, such as sociology. In 1969, he became the president of the American Political Science Association. In his presidential address to the Association, he modified somewhat his behavioural approach to politics. He asserted that the political scientists should not .concentrate on facts only, but explain them on the basis of a theory which was usually neglected by them, i

Before we explain his political system, we may depict its basic components in a diagram as below:


Social, Economics and cultural and other elements of the Environment
INPUTS
Demands
Apathy
Supports
Conversion Process
Governmental Decision Markers
Decisions
and Actions
OUTPUTS
Social, Economics and cultural and other elements of the Environment
Feedback

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Flow Chart of David Easton's Political System (Polity or State)

Definition: Easton defines a political system as "that system of interactions in any society through which binding or authoritative allocations are made and implemented. Authoritative allocations relate to the values or objects or resources of human needs and desires. They can be roughly translated as laws or acts of policy.

Easton's model of the political system (commonly called a polity or State) consists of two main parts: the environment and the political system as such. The political system consists of (i) the conversion process, shown as "the box" in the model (ii) the inputs, (iii) the outputs and (iv) the feedback. We may add here that, according to Easton, there are, besides the

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political system, two other political systems. One of them is below it, which be called *para-political* system, e.g. political panics, pressure groups, etc. and the other is above it, namely the international political system. But it is the national political system which is a political system par excellence because it alone makes and implements authoritative decisions allocating values or goods and resources to individuals, and groups, in the society.

Environment: According to Easton, political life is "a system of behaviour embedded in an environment to the influence of which the political system itself is exposed and in turn reacts". The environment, within which the political system exists, comprises all the social, economic, cultural, religious, ideological and other conditions, without which a political system cannot' exist. In more concrete terms, it means the natural and human resources of the economy, ecological conditions, and all other material and non-material variables. They also include the international resources, influences and conditions For instance, both Soviet Union and U.S.A. are international resources for Bharat, while for Pakistan. America is the only resource. Both the internal and external variables are not a pan of the political system. According to Easton, "In the environment we have such systems as the ecology, economy, culture, personality, social structure and demography". The limits or lines, which separate the environment from the political system, constitute its boundary. Within the boundary lies the political system, which is defined by the possibility of the exercise of legitimate force of its binding decisions. But the boundary is constantly changing, because the conditions in the environment are also constantly changing and the political system has to cope with these changes or variables. They constitute the external variables of the political system. They are the forces which shape and change the inputs some of them come from within the system itself. It may be further noted that Easton's model is based on behavioural approach to politics. As he himself said in a later article, "We have been interpreting political life as a system of behaviour set in an environment and open to the influences stemming from that environment, as well as from internal sources."

The Inputs: Political process begins with the inputs. They are, broadly speaking, of three kinds: demands, supports and apathy or opposition. The government receives the demands and the supports from the domestic and foreign interests, that is, from the environment around the political system. Demands provide the raw material or information, which the system must process and the energy which the system needs. They lead to political activity. They are the signs that the people or the groups want action. They arise either in the environment (external) or within the system itself (internal). The external or environmental sources of the demands are the major portion of the demands, shaping the variables from outside the

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political system. They can be expressed in all manner of ways, such as public opinion, polis, political parties, pressure groups, letters written to the governmental system, and also by means of riots, public demonstrations, and protest marches, etc. But the demands may arise internally from within the governmental system itself. They arise from such aspects and influences as the representation system, the nature of the constitution itself and the norms and procedures of the governmental system; they also arise from the values of the political culture of a political system. In short, they are the significant parts of the material on which the system operates. They are the one important source of change in the political system. They are also speaking, out of about one lakh needs, desires, expectations, plans and projects of the people, including social groups and political parties, about one thousand become their demands. Out of about one thousand demands about one hundred become challenges or issues which influence the government decision makers Out of one hundred issues about ten are actually converted into outputs, i.e., become laws and acts of policy. In a democratic polity, out of the ten outputs, nine have originated from the people or political parties and groups, while one has come from the government itself. But in an undemocratic polity, such as a dictatorship or an autocracy, the ratio is reversed: one effective demand comes from the people, while the nine come from the government. Demands are of several kinds. They depend on the type of the political system. Some of them are as follows-

Economic demands include the desire for higher living standards, better employment opportunities or welfare or social security benefits.

Regulatory demands means the demands for specific legislation, laws for maintaining peace and order, improving Community relations, protecting human rights, etc.

In Islamic countries like Iran, Pakistan, or Saudi Arabia, religious demands may be more important than economic or cultural demands.

The ***"Intermediary gatekeepers"*** In the examples given above, we have said that demands can be in thousands. If all of them become effective or realisable demands or issues, requiring to be convened into outputs, they will overload the political system the conversion "box", i.e. the government. Every desire or hope cannot become a demand. The *"intermediary gatekeepers"* are the regulatory mechanisms which enable the political system prevent some wants. e.g. expectations, opinions, preferences or interests, from becoming issues or realisable and effective demands, and thus prevent overloading of the political system. They are as follows:

1. Structural mechanisms: They are the activities of opinion-leaders, political parties, mass media, pressure groups and the elite classes.

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2. Cultural mechanisms: The cultural mechanisms are the norms which regulate behaviour, impose taboos; and also include the socialisation process.

The ***"gatekeepers"*** operate at various levels of the political system. They sit astride the flow from demand to output and, via the feedback loop back to the input side. They are known as "gatekeepers" because they operate at those strategic points, where demands can be stopped, selected, winnowed down, combined with others or are otherwise altered. It may be mentioned that there are more "gatekeepers" in a democratic State than in the undemocratic dictatorships or autocratic governments, which restrict them from arising. In the examples givens above, in a theocratic State, the- gatekeepers winnow out economic or cultural demands, while they select and strengthen religious ones.

The supports: Supports constitute another kind of inputs. In simple terms it means that the political system exists so long as the government has the support of the people. Supports can be in both active and passive ways. An active support is in the form of actions or attitudes which promote or resist a political system or the demands and decisions which are needed to keep the system going. This refers to three levels which exist to ensure the maintenance of the system which are as under:

Firstly, *the political community:* It supports the system through payment of taxes, participation in elections, obeying laws and accepting certain values, Thus people are part of a total political community, and provide allegiance to the system. The allegiance expresses national unity or "consensus"

Secondly, *the regime:* its members must support the constitutional principles of the political system which legitimise action and provide authority and links between various parts of the political system, such as the executive, the legislature, judiciary, political parties.

Thirdly, *authorities:* They must support the actual government if it is to perform its functions. Public opinion or the views people hold on political or social issues, can also act as a support. Governments generally see to it that their policies satisfy the public's expectations.

Apathy: It is a lack of input. It is a matter of common observation that there are always some people who are indifferent to the political demands. For instance, they do not participate in voting at the time of election. It is a passive indifference. But it affects the inputs. The fewer there are those who participate in politics, the lesser the inputs in the conversion process. Thus the political process is both quantitatively and qualitatively affected.

Conversion Process: Surprisingly enough, Easton says little about the conversion process by which the government actually transforms the inputs into outputs by authoritative allocations or binding decisions. It is the process by which (i) demands are articulated and aggregated into policy proposals and (ii) demands are converted into authoritative decisions which are the OUTPUTS.

Outputs. Outputs are laws or policies. They are the decisions and actions of the authorities. They are of the following kinds:

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(a) extractive, e.g. tax-collection;
(b) regulative e.g. laws;
(c) allocative, i.e. activities which allocate public funds to alternative uses; and
(d) judicial decisions, treaties, executive orders and administrative decisions.

The list of the outputs can be much longer than mentioned above. Briefly, all the activities of the government can be grouped under the broad heading of the outputs of the government. What government does to allocate values or objects of human needs to the society in response to the demands and supports of the people and of special interests are the-outputs.

The feedback: The feedback may be defined as the reactions of the people to the decisions and acts of the-government called the output. Every government action is bound to cause some reaction from at least some of the people. It may be a response of the people who made the original demand or of those who are affected by the output. The feedback is, thus, a dynamic process through which information about the output is communicated back to the system in such a way as to affect the subsequent behaviour of the system. It is a cyclic process by which the government can know how the system is working for the satisfaction of the needs or demands of the people. This is the reason why Easton's model is called flow model of the political system.

The stress: A political system may be in a State of stable equilibrium when the input-output flow may be operating smoothly. But there may be conditions when it is subject to various stresses. They are, for example excess demands, lack of support or the outputs which produce hostile or adverse effects in the environment or the feedback may be overcharged with old and new demands. In such conditions there are various kinds of political protests, which include pickets and strikes, rallies and riots. As the political system seeks to persist in time, it will meet the stresses by its own remedial or regulatory mechanisms and responses. Indeed, no real political system works exactly like the model. There are often many kinds of snags, especially in the developing countries. They are, to mention a few, lethargy of the people, including that of the authorities, corruption, lack of democratic freedoms or outright acts of tyranny and oppression.

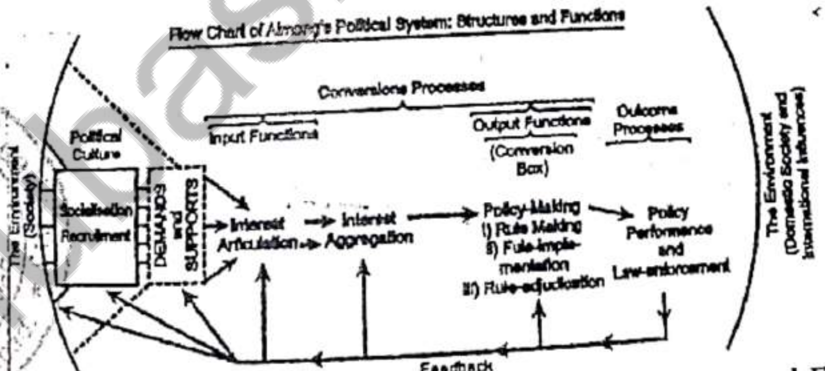
Gabriel Almond and his Systems Analysis:

Gabriel Almond is another prominent American political scientist who has adopted the method of systems analysis in Comparative Politics. He presented it in a number of articles, first of which was written in 1956, and later in a number of books, viz. *The Politics of the Developing Areas* written in 1960 and *Comparative Politics: A Development Approach*[6] written in 1966. He became the President of the American Political Science Association in 1966. In his presidential address, he again discussed the systems approach to politics.

Like David Easton, Almond was in search of a "functional theory of polity". His field was comparative politics, which he studied as a developmental process. He sought to explain how various types of political systems change from the "traditional" to the "modern" systems. His aim was, as he says, "to explain and even predict cycles of short range or long range change of the political system in response to various kinds of environmental pressures." This is developmental approach, which is the main difference between his and Easton's theories.

Almond's theory was more sociological than that of Easton. He was influenced by the German sociologist, Max Weber, and still more by the American Sociologists, Talcott Parsons and Edward Shills. Indeed, it was Talcott Parsons' theory of social systems which he adopted in his analysis of the political systems.

We shall first describe Almond's political system in the form of a flow chart.


Flow Chart of Almond's Political System: Structures and Functions
Conversions Processes
Input Functions
Output Functions
(Conversion Box)
Outcome Processes
The Environment (Society)
Political Culture
Socialisation
Recruitment
DEMANDS and SUPPORTS
Interest Articulation
Interest Aggregation
Policy-Making
i) Rule Making
ii) Rule-implementation
iii) Rule-adjudication
Policy Performance and Law-enforcement
The Environment (Domestic Society and International Influences)
Feedback

Flow Chart of Almond's Political System: Structures and Functions

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[6] See Comparative Politics: System. Process and Policy by Gabriel A Almond and G Binghman Powell, Jr. Second Edition,. Ferozsons (Pvt.) Lid. Lahore. 1987

Political System:

Why do we use this term? First of all, Almond discusses the reason why the term political system is used in Comparative Politics. Formerly, political scientists used such terms as State, government, nation, etc. But these terms are limited by their legal and institutional meanings. Their use does not inform us about the roles played by these institutions in different States or countries. The reason is that the role of such an institution as a legislature or a court, is determined not only by the formal provisions of the constitution and law, but is also influenced by the informal groups, political attitudes, and a great many interpersonal relationships. Therefore, Almond says, "If political science is to be effective in dealing with political phenomena of all kinds of societies, regardless of culture, degree of modernisation, and size, we need a more comprehensive framework of analysis." Now the concept of political system directs our attention to "the entire scope of political activities within a society, regardless of where in the society such activities may be located." In other words, the use of the term "political system" is structurally and functionally more accurate and meaningful than the use of such terms as State, government or the like. These are particular terms and not universal terms like political system.

Regarding the usefulness of the concept of political system, Almond says further 'The principal advantage of the system concept is that it analytically differentiates the objects of study from the government, directs attention to the interaction of the system with other systems in its environment, to its own conversion characteristics, and to its maintenance and additive properties."

What is a political system? This term consists of two pans, "Political" and "System". The term "system" we have already explained as the interdependence of the pans of an organism or machine on each other. If one part is changed in any way, it affects all the others. For instance, in a motor car the ring is a very small part of its engine. But if it is worn out, it will affect the working of the engine. It will then consume more petrol and produce less power, which will affect the speed of the car. Thus the wearing out of the ring will change the whole performance of the car.

Now, interdependence or interaction between the parts and the whole is common to all systems, whether social, economic or political. The question is: what makes a system political? It is the use of legitimate force or physical compulsion which distinguishes the political system from all other kinds of systems. Therefore all relations, whether social, economic, cultural, religious, etc., which depend upon the use of legitimate force or threat of use of such a force become political relations and thereby become a part of the political system. He says, "When we speak of the political system, we include all the interactions which affect the use or threat of use of legitimate physical coercion. The political system includes not only governmental institutions such as legislatures, courts, and administrative agencies, but all structures in their political aspects. Among these are traditional structures such as kinship and caste groupings; and anomic phenomena such as assassinations, riots and demonstrations; as well as formal organisations like parties, interest groups, and media of communication." For instance, the political system of a country is of one kind, when there is no television station in it. But it will be changed into another kind when a TV station or stations are installed in it. What is more, even, if a country has no TV station in it, but a neighbouring country installs one, the political system of the TV-less country will be accordingly changed, for it will be affected, adversely or not, by foreign telecasts. Thus the installation of a TV system is not merely a recreational matter, but has political effects not only on the political system of the country in question but also on all those countries which come within its telecast range. This leads us to the question: where is the boundary of a political system?

Boundary of a political system:

David Easton has given a rough and ready description of the boundary between the society and the polity. But Almond has described it in more operational terms hard and fast line of demarcation can be drawn between a political and the social, economic or religious systems, because the boundary of the political system is constantly changing. It is sometimes expanding, and at other times contracting. Take the case of inflation. When prices are stable, the political system of a country has noting to do with religion the question of wages or salaries. It is a matter between employers and employees. In other words, it is only an economic relation. However, when prices rise, the wages of the workers may not be sufficient for their daily needs. But their employers may refuse to increase their wages accordingly. The workers may threaten strike to compel the employers to do so. The strike may turn into a riot, which becomes a political question. Thus inflation brings economic relations within the boundary of a political system, which may in its turn affect even the political philosophy of the country. In short, the question of inflation expands the political system. Or take another example. In an Islamic country, religious questions expand the political system. While in a secular country, in which politics has nothing to with the religious questions do not become political, the political boundary is accordingly contracted. Or take the case of the student's unions. Once they were peaceful bodies, interested in training students for debates and such other educational matters. But when they were turned by some political parties into instruments of students' strikes and riots, they have become political and come within the boundary of the political system. Or take the case of women. For centuries women lived under the domination of

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Chapter 8

Inter disciplinary concepts in Political Science.

Political Science has been influenced by the discoveries, concepts and theories of modern social sciences, such as psychology, psycho-analysis, sociology, anthropology, etc. These influences have given it many new concepts, such as political sociology, political socialisation, political culture, political personality, etc. They are the approach factors to Political Science, which we have referred to in the Chapter Two above.

POLITICAL SOCIOLOGY

Political sociology is the sociology of politics. It may be defined as the systematic and empirical study of political phenomena and organisations as they influence social life and social structures and are, in turn influenced by them. In short, it studies the influence of politics on society and of the society on politics.

Political sociology has a very long history, going as far back as Aristotle, Ibn Khaldun, Montesquieu, Karl Marx, de Tocqueville, Lord Bryce, Max Weber, Graham Wallas, Mosca and Wright Mills. For instance, Marx (1818-1883) was the first to study class conflicts and social stratification on the basis of economic means and methods of production. Max Weber (1864-1920) the German Sociologist emphasised the role of religion and politics on the growth of new social systems, while sociologists like the Italian Mosca and the American Wright Mills studied the role of political elites and the processes of consensus and conflict in society. However, the term "political sociology" first came into use in 1945. Since then, political sociology has become an empirical study of actual political behaviour of the voters, political leaders or elites, attitude research, etc. It studies political institutions, both formal and informal, as parts of the social system, and not as separate from the society, in which they operate. Broadly speaking, political sociology studies the following problems:

1. Political conflict and consensus in human society;
2. divides Social stratification, influencing and being influenced by politics;
3. Various kinds of *elites* and their influence on social life;
4. Alienation: and its social, economic and political origins;

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5. Voting behaviour and its effects on political parties;
6. Political parties;
7. Interest or pressure groups.
8. Ideologies, their rise and influence on politics and society.

Conflict and consensus approach of political sociology gives us two views of its influence on politics and society. Karl Marx was the first to emphasise the role of class conflicts in the evolution of society. According to him, when new means and methods of production come into being, they produce a new class, which comes into conflict with the older classes still in possession of the old productive forces and relations in the society. But when it overthrows the old classes, it transforms the whole society and culture. But the new society again gives birth to a new class due to new technology and methods of production. As opposed to Marxist sociology, the consensual political sociology declares that with the growth of industry, a middle class comes into being, which harmonises the interests of the working classes with industrial classes and thus produce consensus in the society.

Elite Groups:

Political sociology, in present times, has concentrated attention on the study of elite groups, especially political elites, their membership and influence on social, political and economic relations and processes. Analysis of the elites is also closely connected with questions of political leadership, party organisation and political power. An interesting type of elite group is the military elites. Military leaders have always influenced political and social life of the nations and countries in all ages. In modern times, military elites have joined hands with industrial, religious and other social groups and thus control political power and economic resources of their States.

Political parties are also studied and analysed by the political sociologists. As political parties penetrate all aspects of modern State and society, their organisation and influence are important parts of the research by political sociologists. R.Michels, a political sociologist, asserted in his book, Political Parties, that in every party there are always some individuals or leaders who will dominate it. He called it the "iron law of oligarchy". He asserts that where there is organisation, there is oligarchy. He thus sought to prove that even representative institutions, like modern political parties, cannot be democratic. Even democracies will be dominated by elite groups. However, elite analysis has now shifted to the problems of elite behaviour, which is influenced by the way they are recruited and thus acquire opportunities for control and promotion. In present times, the political and party elites are selected on the criterion of achievement rather

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basis of birth, status, wealth or social background, as was the case in the past ages.

Alienation is another important topic of political sociology, both theoretical and research-oriented. Alienation is a socio-psychological phenomenon. It means a tendency to withdraw or disengage from political affairs and problems and to be reluctant to participate in politics or in political activities. It is a form of political apathy. Alienation is manifested by various social groups during certain periods, such as youth, minorities, intellectuals, etc. It may be due to the structure of political or social life. For instance, in male-dominated traditional societies, women show political apathy and disinterest in politics. Marx was the first writer to study alienation. But he believed that it was permanent State of mind of certain groups, such as of the working classes in the capitalist society. In modern times, however, alienation is regarded as an attitude, which changes when social or political system changes. Alienation leads to various kinds of political movements and revolts, which aim at bringing about a change in the political system which has alienated the majority of the people.

Voting behaviour of the people is another important field of research and empirical studies in political sociology. These studies have indicated that, under ordinary circumstances and conditions, the voting behaviour of the people does not change and that the people are very conservative in their political attitudes and loyalties to political parties and ideologies. But their voting behaviour changes in times of social or political crisis.

To conclude, political sociology has revealed close links and interdependence between society and politics, that is to say, between the social, economic and psychological conditions and attitudes, on the one side, and political organisations and processes, on the other, and that political systems, governments and political parties are not so self-subsistent and independent phenomena as they were believed to be in the past ages.

POLITICAL SOCIALISATION

Political socialisation is both a formal and informal process of social and educative learning, by which political attitudes, preferences, skills, habits and beliefs are consciously and unconsciously imbibed by the individuals or citizens. It is a very important process. It orientates the people not only towards one or the other kind of political behaviour, political philosophy and ideology, but also causes stability or instability, continuity or change, and strength or weakness in a political system, and in the government of a country. It determines the type of participation in politics and government by the people. It is, indeed, the political aspect of the general process of socialisation which is always taking place in every society and culture. Harold D. Lasswell explains this process as thus: who learns what, from whom, under what circumstances, and with what effects.

Political learning begins early in family life, when the child is still young, when different treatment of the little boys and girls produces different political attitudes and behaviour in them. Generally speaking, boys are expected to be active in politics, while girls are deliberately denied political orientation and participation by their parents and other people around them. Class differences also produce differences in political attitudes and behaviour. Richer and well-off classes expect their members, young and old, to learn political skills and habits of domination and superiority, while the poorer classes are mostly humble, docile and submissive in their political attitudes and behaviour.

Agents of political socialisation are several; some of them influence the people more actively and deliberately, while others inculcate political attitudes, etc., more passively and unconsciously. Among the first is the family. Many of the political attitudes, beliefs, preferences and skills are learnt by the children at home. But, as we said above just now, this learning is affected by sex and class differences. In a traditional society, as for instance in India or Pakistan, the political education in the family is also influenced by the larger groups around the family, such as the castes and clans, tribes and *baradaries,* etc. Ethnic troubles, e.g., in Pakistan, are mainly, though not exclusively, caused by this kind of political socialisation in the family and neighbourhood life.

The second powerful agent is the school. Not only the political attitudes and beliefs of the teachers influence their pupils, but civic education is purposely imparted to them. This is one reason why the subject of civics is always taught in schools. Moreover, patriotism is also taught in schools by such methods as the daily singing of national anthem or saluting the national flag.

Other agents of political socialisation are newspapers, and journals, radio and television, political parties, pressure and interest groups, friends and neighbours, etc. Sometimes the influence of these agents is deliberate and consciously inculcated, but most often it is not so. Moreover, their influence produces some de-stabilising effect on the growing minds of the young people, for they sometimes learn the political cynicism of the adults around them. Consequently, they begin to downgrade political sentiments of loyalty and patriotism. This type of dichotomy in political socialisation also causes the phenomenon, called the revolt of the youth, especially among the college and university students. However, in the ideological countries, such as the Communist countries or Khomeini's Iran, deliberate political

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socialisation, called political indoctrination, is regarded as a primary duty of the State.

POLITICAL ANTHROPOLOGY

Political anthropology studies the origin of political power and authority in the primitive folk-societies of the past and present times. According to it, there are two kinds of societies: present societies with the State structures, and Stateless societies of the primitive times. The Stateless societies (as among the tribal peoples in Asia, Africa and other continents) were for a long time without a State system. But they had such political features as tribal leadership, control, as well as conflicts over the pastures, herds and such other rudimentary forms of property. These conflicts are not among individuals, as in modern societies, but among groups, which the political anthropologists call tribal segments. They are based on paternal-lineages/baradaries in Urdu or descent from common male ancestors. Still more primitive folk-societies, as among the aborigines of Australia or in the remote jungles of Indonesia, where society was matriarchal or there were not patriarchal segments, but bands. They hunted together and divided the food among them almost equally. Among these primitive bands, there was no politics, because there was no conflict. The whole band lived, moved and hunted together as a single social unit.

In short, political anthropology has described three kinds of societies: (i) States, as in the modern times (ii) Stateless folk-societies, which have or had rudimentary forms of political system and authority; and (iii) the apolitical bands of the most primitive times.

POLITICAL PERSONALITY

The idea of political personality is very old. People have always thought about the habits and qualities of the kings, rulers, conquerors, Statesmen, ministers, politicians, judges, administrators, and other men of authority. But the development of psychology, psychiatry and especially psycho-analysis has made the concept of 'political personality' qualitatively different from the earlier concepts.

Political personality may be defined as the enduring, organised and dynamic response-behaviour which is habitually expressed in a political situation. In other words, the habitual patterns of feeling, learning, knowing and behaving in leadership situations constitute political personality. In short, it is the leadership qualities of an individual.

The political personality of an individual is formed by his need or urge for power and control over others and his reactions to their opposition and resistance. He is confronted with such a situation from early childhood in his family life to adult age. Its formation depends not only upon the individual's psychology and character but also on the national character, social and political system in which he lives and the political culture and national character of the people of his country.[16] In short, political personality is formed by the life-processes of an individual: patterns of one's need for power, expressed through need-coping mechanisms (e.g. repression, stimulation, ego-striving, etc.), modified by his perceptions of reality and habits of learning, and screened through ideological influences.

Political personality must be 'dynamic', that is, it must be capable of doing something important or achieving such a change as desired by the group or people around the leader. In other words, a political leader must be a man or woman of action. This quality differentiates and distinguishes a political leader from a man of letters, a scholar or a philosopher. Sher Shah Suri, the Pathan Emperor of India, explained this quality succinctly as thus: "It behoves the great to be always active." A political leader must possess dynamism, which means the ability to change the behaviour of others. He should, therefore, be at once a man of words as well as of action, but more essentially of action. In past ages, political personality was mostly formed by the ideology and culture of the country in which the leader arose. But in present times, it is also influenced by international conditions and culture.

Various forms of political personality:

Political personality is different in different political systems. The personality of a parliamentarian is different from that of a leader of a political party. This is the reason why sometimes a powerful party leader proves to be a poor parliamentarian, or he may become a failure as a ruler. Similarly, a good judge may be a bad administrator, and vice versa. Even the political personality of the leaders of various political parties differ from each other, e.g., the political personality of the leader of a socialist party is different from that of a conservative party, of a religious party from that of a progressive party and so on.

The reason lies in the differences in party ideology as well as of the political environment of the party and of the group of people among whom they work.

Types of Political Personality:

Modern political scientists, psychologists and sociologists have analysed political personality into various types. They may be enumerated, briefly, as under:

1. Democratic personality;

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[16] George Plekhanov, a Russian political thinker, writer, "A great man is great not because his personal qualities give individual features to great historical events, but because he possesses qualities which make him most capable of serving the social needs of his time, needs which arose as a result of general and particular causes."

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2. Liberal personality;
3. Conservative personality;
4. Progressive personality;
5. Radical or extremist personality;
6. Charismatic personality;
7. Revolutionary personality;
8. Authoritarian personality;

Indeed, the list is too long to be enumerated here. A conservative personality seeks to maintain status quo, while a radical personality wants to change the existing order of his country. Broadly speaking, the differences of the personality types lie in the process of political socialisation of the person concerned in his family, school and adult age, in the ideology and culture of his society and in his own attitudes and belief-systems. Moreover, it should be noted that the personality types often overlap. Thus a political personality may be at once liberal and democratic, conservative and democratic, progressive and revolutionary, charismatic and conservative, authoritarian and conservative and so on. In short, the personality configuration is often highly varied. What is more, the voters often vote for a candidate whose political personality they prefer. At least, this is what is expected of the system of political representation. Two factors may also produce various types of political personality. They are alienation i.e. dislike and disloyally towards authority and anomie or apathy and disregard of political norms or rules. These conditions may produce, on the one hand, passive and traditional (political) personality and, on the other, radical, extremist or revolutionary personality.

POLITICAL CULTURE

Although it was known for ages that the cultures of various peoples and countries were and are different from each other, yet the idea of political culture is a recent one. In fact, it has been derived from the researches of the political scientists in the field of political systems analysis.

Definitions of political culture are many and varied. Roy Macridis says that it is "the commonly shared goals and the commonly accepted rules" regarding government and politics. Sidney Verba says: political culture is "the system of empirical beliefs, expressive symbols and values, which defines the situation in which political action takes place." Their definition makes it clear that "political culture" is not an a priori concept, but is about the day-to-day behaviour of the rulers and the ruled. Samuel Beer says that political culture consists of political values, beliefs and emotional attitudes about how government ought to be conducted and about what it should be. These values and beliefs, with greater or lesser modification, are passed on by instruction or imitation from one generation to the next. Thus Beer emphasizes continuity in political culture. It means that the political culture of a country is part of its general culture. It springs from the conceptions of authority and the conceptions of purpose for which authority is exercised in a country.

One difficulty of defining political culture is that it is a result of two opposite and sometimes contradictory trends, namely the political beliefs and attitudes of the individual and the political values and attitudes of the people and society in which he or she lives. Individual's attitudes and values are the result of political socialisation through which he or she has gone from childhood to adult age, which orientate him or her towards the political system. Political orientation of the individual can be due to three factors: individual perceptions of the political system and of its political personalities and structures; his or her feelings towards them; and the conclusions and opinions a person draws about them. These perceptions, attitudes and opinions produce effects on the political system. This is called his or *her political efficacy*. It means that the citizen can influence positively or negatively the decisions and policies of the rulers by his efforts, such as by his or her vote. This belief is the basis of democratic political culture. On the contrary, a person may believe that his political system is one of bribery, favouritism, nepotism and influence peddling. In this case, its political culture excites feelings of distrust, apathy, and a low degree of commitment to the political system. Moreover, in a country, there may be groups whose beliefs and values are different from the majority group. Such groups have a sub-culture. The political culture must, however, be acceptable to the bulk of the people in the country, if its political system is to achieve some degree of stability and security. In other words, it must have legitimacy, if it is to be a viable political system. This is the role of political culture in the political system. Every political system is embedded in its political culture.

In some cases, however, it may so happen that a political system "may change, but its political culture many not change correspondingly, or the political culture may change, but its political system may not. In such situations, the stability and continuity of the political system may be threatened. Such situations are the results of political alienation or anomie, apathy or disbelief in the old rules and norms of political culture or may be due to new forces of change, generated among some individuals or groups in the community, which may challenge loyalty, allegiance and trust in the decision-making authority of the political system. In more concrete terms, this dichotomy is due to the failure of the conversion processes or of the feedback to change the demands of the people into laws and policies by the decision-makers. It means that the "culture" of the decision-makers has become different from the "culture" or beliefs, attitudes, expectations and wishes of the people.

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We may define the political culture as those ideas, values, attitudes or orientations about a political system which are acceptable to and shared by the majority of the people in the State.

Elements of the Political Culture:

Every political culture consists of various elements, which are orientations of the people towards different aspects of the political system. They are as follows:

1. Orientations towards governmental structures:

It means orientations towards governmental inputs and outputs. They may result in allegiance or alienation of the people towards the government. Robert Dahl has characterised these orientations or attitudes as *allegiant* or *alienated*. The allegiant orientations cause stability and continuity in the political system, while the alienated orientations lead to instability and change, which may result in revolt, revolution or transformation of the political system.

2. Orientations towards other people.

They produce trustful or distrustful attitudes towards the political authorities or government. They arise when the people ask: does government mean well in its policies and acts?

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3. Orientations towards collective actions.

This kind of orientation or attitude is the basis of an individual's political participation, which may be active or passive. Active orientation makes an individual believe that he can influence the decision-makers in the political system by his efforts. In case of passive orientation, the individual has no faith in his ability to influence the decision-makers. Instead, he passively accepts what they do. This is the basic difference between democratic and non-democratic political cultures.

Some examples would illustrate the differences between various political cultures. In the countries in which government is regarded with fear and awe, majority of the people do not participate in politics and government, which they consider to be the privilege of the elite classes. Such attitudes are even impressed in their daily behaviour. In Mughal India, for instance, whenever a man saluted the emperor or governor, he bent down in obeisance, or *"kornish"*, before him. This practice, an outgrowth of feudal culture, was continued even during the British Rule in India. In the present-day independent Bharat, it is the practice of standing with folded hands before a man of authority. It is an outgrowth of the Hindu religious and culture. In Japan, the culture requires that when two men meet, they bow before each other according to their social status: man with lower status will bow much lower before the one of higher status: and when they bow before a man of authority, they bow the lowest.

In truly democratic countries, political cultures are quite different. In the United States, for example, people show their respect to men of authority but in a dignified manner. They only shake hands and address even the President of America as "Mr. President". It is because the American Constitution had abolished all kinds of feudal honours and modes of address. In Great Britain, where feudal traditions have persisted in social dealings, the popular attitude towards the government is more deferential. In France and Italy, political subcultures are still strong, causing governments to be unstable, and alienation and anomie so common attitudes of the people in politics. In West Germany, where the culture of obedience and discipline prevails, the people are not very much insistent on political rights. In most Muslim countries, passive obedience of men of authority is a part of their political culture.

The concept of political culture enables us to distinguish between power and authority. Unlike power, authority is exercised with the consent of the ruled. The people, who value power more than authority, will tend to be ruled by military men or dictators, while those who value authority more than power, tend to have democratic systems of government among them. What is more, the people who value authority more than power will possess such democratic values as rule of law, respect for the dignity of the individual, respect for rights, respect for electoral decisions, etc. In short, their political culture will be radically different from that of the people who value power as the basis of relations between the rulers and the ruled. But political culture is not something permanent or eternal. Most of the time, it changes slowly, though at times it may change rapidly. These changes may come from within the people themselves or from foreign sources. Foreign domination is one of the most powerful sources of changes in a political culture, because it results, in the establishment of a new political system, devised by the foreign rulers. For instance, the rise of the British Rule in the South Asian Sub-continent transformed its political system from what it was in pre-British times. For instance, all the talk in the Sub-continent of democracy, parliamentarianism, elections, rule of law, freedom of the press, rights and freedoms of the individual, etc., is due to the political culture inculcated by the British Rule, which culture was absolutely unknown to the peoples of the Sub-continent. But foreign influences on a political culture can also take place without foreign domination, as for instance through such information agencies as foreign radio or television stations, foreign news agencies, books, publications and foreign travel. Not only the general culture but also the political culture of a people changes under these influences. However, they can protect themselves from these influences by

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xenophobia or fear or hatred of the foreign persons and things. This is the reason why the political cultures of Japan and Turkey, who resisted Western domination for so long, are so different from the political cultures of other peoples of Asia, and Africa. In Europe, the English people have the most xenophobic political culture. Moreover, the history of a people is greatly determined by the kind of their political culture. The people with xenophobic political culture protect their national freedom and independence more successfully than others. Furthermore, the more their political culture is uniform and influential among the whole people, the more they will be able to resist the fissiparous and disintegrative tendencies of the political sub-cultures among them, that is, of the political subcultures of their ethnic, religious and other minority groups. In short, the political system of a country depends greatly on the type of its political culture.

Significance of "political culture":

According to Almond and Verba, the concept of political culture provides the connecting link between micro-politics and macro-politics. Political culture is not a unitary concept. Lesser social and political groups have their sub-cultures, or micro-political cultures, while in modern societies and countries; there is also a macro-political culture of the nation or State. However, in the developing countries, the micro political cultures of the lesser groups or communities may be too powerful or influential for the macro political culture to be effective or efficient such are the cultures of the tribal or caste societies. On the contrary, in the modern States, the micro political cultures of the parochial groups or loyalties are either non-existent or ineffective. In other words, the decisions or a preference of the voters, of the officers or of the governmental decision- or policy-makers is made with a view to the interest of the whole nation. The problem of modernisation in the developing countries of the Third World is really the problem of transforming their micro political cultures into macro political cultures. The difference in political decision and policy making provides us with different types of political cultures.

TYPES OF POLITICAL CULTURE

The structural and functional differences in political systems give us different kinds or types of political cultures. Broadly speaking, they are of five types, as under:

1. **Parochial political culture,** in which there is loyalty and allegiance to the tribes or tribal groups, as in the Stateless societies of the primitive times or of the sub-Saharan African tribes of the past & present times.

2. **The parochial-subject political culture,** in which the first loyalty and allegiance of an individual is towards his caste or tribe or local community, and lesser allegiance to the State. The State also fulfils minimal demands of its subjects. As the culture is parochial, the people do not make many demands on the State; they are not citizens, but subjects. This type of culture existed in ancient and medieval times, as in the Gupta Empire of ancient India, or the Mughal Empire of medieval India, or in the Ottoman Empire, etc.

3. **Parochial Participant Culture.** The parochial participant political culture is one in which commitment and allegiance to the parochial communities, like caste, tribes and local communities or baradaries is still strong but the people also participate in the political activities of the State, such as elections, in which they cast their votes in the interest of their parochial groups, not for the political parties or national interest. This kind of culture is found mostly in the newly independent countries of Asia and Africa and of South America.

4. **Subject political culture.** It is one in which there are several political sub-cultures and therefore the subjects (people) participate in the political authority to a limited extent; hence they are not citizens, e.g. in the Bourbon France before the French Revolution of 1789. It becomes subject-participant culture, when the subjects (people) participate in the political system to some extent. In this culture, there is some alienation and apathy among the people. This type of political culture is found in modern France, Germany, Italy, etc.

5. **Participant Political Culture.** In this type of political culture the people participate in the political authority. They are, therefore, not subjects, but citizens. G. Almond and S.Verba have called this type of political culture as civic culture, as for example, in the United Kingdom or in the United States. This type of political culture requires two things of the citizens: rationality and active participation in political affairs. Political thinkers, from Locke to Harold Laski, have always favoured this kind of the rationality-activist model of political culture. According to this model, a successful democracy requires the citizens to be involved and active in politics, informed about the political affairs as well as influential in them. Their decisions, including that of voting, should be based on a careful evaluation of evidence and careful weighing of alternatives. The passive, non-voting, poorly-informed, or apathetic citizens may weaken democracy. Moreover, they should not be motivated by any lesser loyalties or solidarities, as do the voters in parochial participant cultures. Such a model of active and rational participation emphasises the participant orientation [illegible] politics, and especially to political inputs, or demands of the people. Their

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allegiance is also primarily to the State or nation, even though they differ among themselves on party or policy matters.

6. **Authoritarian participant culture.** It is the type of political culture in which participation in political affairs and decisions is according to the *authority* of the State or government. The ruler is the real decision-maker and the people, as voters, are to comply with his decisions. This type of culture existed in Fascist Italy, Nazi Germany and exists now in the Soviet Union, Communist China and such other countries.

Change in Political Cultures:

Some political scientists believe that political cultures are not subject to much change. It is said that constitutions are not exportable. The truth is that a political culture is liable to change, although it changes gradually over generations, sometimes over centuries. But, during a revolution, it may change more rapidly than ever before. Such a change can also be brought about by the rise of a powerful political personality or by the domination by an advanced political culture, as it happened in those countries of the Third World which came under the domination of the Western Imperialisms. That was the reason why their parochial subject cultures changed into parochial participant cultures as we have noted above. In more recent times, the authoritarian cultures of the Soviet Union and Communist China are changing under the glasnost and perestroika policies of the Soviet leader Mikhail Gorbachev and identical polices of the Chinese leader, Deng Xiaoping. Nevertheless, a political culture has a momentum of its own. Even if a culture changes, it changes according to its internal conditions, which may help or hinder the change process. That is why, for example, the British model of parliamentary democracy in the present-day Bharat has been greatly changed by its dominant Hindu caste culture. In Pakistan, the reason why parliamentary democracy does not work properly is the influence of feudal, caste and tribal sub-cultures. On the other hand, introduction of sudden radical changes in political structure or in the social system may prove to be disastrous, as for instance was the case of the introduction of socialist reforms in Pakistan by Mr. Z.A. Bhutto's Government. The reason is that such changes are incompatible with the political culture of the country in question.

Lastly, political cultures are rarely integrated and homogeneous wholes. Instead, they may have one or more political sub-cultures due to racial, ethnic, religious and other reasons. This fact may result in one sector of the culture to change or develop more rapidly than other sectors or groups. If the sub-culture is more powerful, it may become such a political force as to lead to the disintegration of a political system of the country, due to its ethnic, religious, linguistic and such other differences in it. It is necessary, therefore, for such a political system to foster homogeneous and uniform economic, social and cultural development in the country. This is the essence of nationalism.

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We may define it thus: The State is a community of people, occupying a definite territory, organised under a government, which is supreme over all persons and associations within its territory and independent of all foreign control or power.

ELEMENTS OF THE STATE

From the definitions of the State, given above, we learn that it is composed of four essential elements or attributes:

1. Population;
2. Land or Territory; } Physical bases of the State;
3. Government; and
4. Sovereignty. } Political or spiritual bases of the State

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1. Population. --

Man is by nature a social being; he cannot but live among other human beings. The State is an association of men living together. We cannot, conceive of a State without a population. Broadly speaking, the population of a State consists of three kinds of inhabitants; full Members State, called the citizens, who enjoy all rights and perform every duty towards their State; the subjects or nationals of the State who enjoy some rights; and non-members, called aliens, who are given only civil rights of life and property. The first two categories are the real elements of the population of a State. The question, which had much occupied the attention of ancient as well as modern thinkers, is: How large should be the population of a State? Plato believed that an ideal State should have a population of 5040 persons. Aristotle considered that it should be between ten thousand to one lakh persons. He, however, laid down a general principle that the number should neither be too large nor too small. It should be large enough to be self-sufficient and small enough to be well governed.[22] But the ideal of these thinkers was a city-State. Rousseau, who also did not like large States, put the figure at 10,000.

In modern times the States consist of large populations. There are small States with a population of few lakhs, like Panama or Albania, and very large States such as USSR with 28 crores, or China with 100 crores population.[23] No limit, theoretical or practical, can be placed on the population of a State. Only one thing can be said. The population should be so much as would be sufficient to perform all the needs of culture, arts, learning, industry, agriculture, defence and civilised life. It should not exceed the natural and human resources of the country.

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[22] **'A city (State) should consist of such numbers as will be sufficient (to enable the habitats to live happily in their political community'. *Cf. Politics of Aristotle*, p. 210. (Everyman's Library).**

2. Territory:

It is the second physical basis of the State. The people must live on a definite portion of territory of an appropriate size.[24] They must not wander from country to country, like the nomadic tribes. Wandering tribes do not form a State. When a people live together on a particular territory, they develop community of interests and patriotism, which are necessary elements of Statehood. For instance, the Jews of Europe and America did not have a State till they occupied Palestine with the help of Anglo-American support and built their State of "Israel". Similarly the Muslims of pre-partition India were a nation but no State, till Pakistan was parcelled out of the pre-Independence India. Like the population, the territory of modern States varies greatly. There are small States, like Luxembourg and big continental States, like Russia and Australia. Political writers differ regarding the size of the territory of the State. Formerly, they generally declared that the territory must be small enough to be well administered. It was thought that "a small State was proportionately stronger than a large one". On the contrary, in modern times, the tendency is towards large States, because the means of communication and transport have become so fast and cheap that vast areas can make a compact State. Democracy is possible in vast countries, as it was not possible in ancient or medieval

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[23] **When Zanzibar, Kenya, and other new States, became sovereign States in Africa. The Times of London bemoaned over their tiny populations and meagre resources as thus: "Zanzibar now will be simply one of the many tiny States thrown up by the process of decolonization as the result of fierce but parochial nationalism, and it is far from being the richest. Cyprus has a population of 5,800,000 and exports and budget of about £ 30 per head. Trinidad, with a population of 9.00.000 has exports of L145 a head and a budget of £ 50 a head. Gobao with a population of 3.20.000 exports of £ 20 a head and a budget of L15 a head. There is a deficit of L4.50.000 on a budget of L32.47.000. Expenditure will rise as the cost of a diplomatic establishment is added, and on account of rising expectations of education, health and welfare." The London Time has conveniently forgotten to mention Kuwait, Israel or Singapore, the tiniest of all the tiny States but not so meagre in finances and budgets. (L = Pound Sterling).**

[24] **Aristotle remarks: To the size of States there is a limit, as there are to other things, plants, animals; implements; for none of these retain their natural power when they are too large or too small but they either wholly lose their nature or are spoiled. For example, a ship which is only a span long will not be a ship at all, nor a ship a quarter of a mile long; yet there may be a ship of a certain size, either too large or too small which will still be a ship, but bad for sailing. In like manner a State when composed of too few is not as a State ought to be. Self-sufficing: when of too many, though self-sufficing in all mere necess[illegible] nation and not a State, being almost incapable of constitutional government: See Politics (Jowett's translation) Book VII. Chapter 4.**

times. Moreover, a small State does not possess enough natural resources within its boundaries for economic and military needs of modern life and defence. A small State cannot defend itself and perform other functions adequately which a State is expected to perform. The German writer, Treitschke, said, "The State is a power, and it is a sin for the State to be small". Modem tendency is towards economic self-sufficiency which is possible in large-sized States? Nonetheless, the population and territory should be correlated: State does not mean only the land, soil, rivers, lakes, mountains, etc. but also the subsoil and its natural resources. It extends to three miles into the sea or ocean and up to 20 miles (32 Kilometres), for economic purposes. If it is a Maritime State up into the air space above it. As regards the limits of air-space of the State, a very interesting question has arisen in the present days due to the invention of the artificial satellites and spacecrafts which spin around our planet thousands of kilometres up in the cosmic space. When the aeroplanes were invented, the air-space was extended as far as the highest flight of the latest aeroplane. But there is an obvious difficulty to apply this rule of the international law to the man-made "moons" and spaceships. This problem of the territorial limits of the 'cosmic space' is yet to be solved by international law.

3. Government:

A people living permanently on a definite territory do not form a State without a government to which they render habitual obedience. The State is nothing if there is no government to make it real. A people without a government are a mere assemblage of human beings and not a politically organised community. Government is the machinery or agency through which the will of the State is formulated and expressed. The State plans and acts through the government. It is the government that administers the State, keeps law and order, formulates the policy of the State, and organises the people dwelling within its territory. If the people are the limbs and the territory the body, the government is the head of the State.

4. Sovereignty:

The fourth essential element of the State is sovereignty. It means the supreme, original and unlimited power exercised over all persons and associations within the boundaries of the State, independent of every outside power. It is the soul of the State. The State alone is the sovereign association. It has two aspects: internally the State is supreme over all persons and associations; and externally it is independent of all foreign control or power.

Other Features of the State

Although the State is composed of the four essential elements, described above, it is also characterised by certain other features. They follow from the four essential elements, especially from the two, sovereignty and territory. They are as under:

1. Unity:

It simply means that the; population and territory of the State are organised and united under a single supreme power. Unity, however, is an attribute, not an element. It arises from the elements of territorial integrity and sovereignty of the State.

2. Continuity or Permanence:

It means that the State continues to exist for all times. Theoretically, the State is immortal. Its laws and sovereignty are for all times. Governments may change, but the State continues to exist; the king dies, but the kingdom lives on. In actual practice, however, it is not the State but the idea of the State that is immortal. The actual States have frequently changed in history, at times by slow evolution and at times, by forcible revolution. Once England was an absolute monarchy, then she became an oligarchy, now she is a crowned democracy, in which the Queen or King is a mere figurehead. In France, these changes have taken place in a violent, revolutionary way. Similarly, Russia before 1917 was an absolute monarchy, but she is today a Communist State. Moreover, one State can be conquered and annexed by another State, just as England subjugated many States in the post-Mughal India. So, in practice, States are not continuous and immortal, as they are claimed to be in theory.

3. Equality:

It means that all States, whether big or small, are equal in the eyes of International law. It is an attribute of external sovereignty.

UNSCIENTIFIC USES OF THE TERM 'STATE'

As we have said above, the word 'State' is sometimes used in an unscientific manner. For example, each of the units of the USA is described as a 'State', e.g., the New York State. Similarly, in pre-Partition India, the native princes ruled certain parts of the Indo-Pak subcontinent, which were called the 'States', e.g., the Hyderabad Deccan State, or the Swat State in Pakistan.

Hence questions may be asked: (a) Was Hyderabad or Swat State a State? (b) Is New York State a State? In the same way a question may be asked whether the U.N.O. can be regarded as a State or not. (d) Is a British

Dominion a sovereign State? (e) Is Peshawar or Lahore Corporation a State?

(a) **Hyderabad (Deccan) State:**

It was a 'State' in British India. But it was a misnomer to call it a State, because it had no independence and no foreign policy of its own. It was under the paramount power of the British rulers of India, who interfered even in its internal administration and law. The Bharat Government, which succeeded the British, has therefore dismembered and put an end to it, without any international reactions, because it was an 'internal matter' of Bharat. Similarly Pakistan has annexed such princely State as Swat, Chitral, Bhawalpur, into its territories.

(b) **New York State:**

It is one of the 50 'States' of the U.S.A. It is a component unit of a federal State, but it is not a 'State' in the sense as understood in Political Science. No doubt, it has the three essentials, namely, people, territory and government. But it does not possess the most essential element of sovereignty. New York State has no army, no defence or foreign policy of its own. In this respect, it obeys the authority of the Federal Government of the U.S.A. at Washington D.C.

(c) **U.N.O.**

It is also not a State. Although it has a rudimentary kind of governmental organisation, e.g., a General Assembly, a Security Council, a Secretary-General and an International Court which might be regarded as its legislative, executive, administrative and judicial organs, like that of a State government, yet it lacks all essential elements which constitute a State. It has no people whom it can rule, no territory which is its own and, above all, no sovereign authority. It is not even a 'super-State as it is sometimes claimed. It is only an association of independent, sovereign States, which have agreed to participate in its discussions and decisions for their national ends and interests, and to obey it only in those matters which suit their own interests or purposes. It is claimed by some American and European writers that the U.N.O. would become the world-State of the future. But such an evolution seems to be quite improbable, because it would violate one of the basic principles of the U.N. Charter, viz., the sovereignty and independence of its member-States. The U.N.O. is only a glorified International Postal Union or such other international organisation.

(d) **British Dominions:**

British' Commonwealth of Nations comprises several States which enjoy what is called a Dominion Status. They are Canada, Australia, New

Zealand, etc. Ghana, Bharat and others are also Dominions with somewhat different status. Is a Dominion a sovereign State although it is a member of a wider political union, the Commonwealth? It is said that they are no sovereign States, because, firstly, they have accepted constitutions framed by the British Parliament, and, secondly, their Heads of State, the Governors-Generals, are appointed by the British Sovereign. But this is wrong. The British Dominions are sovereign States, as it is shown by the definition of the Dominion Status. The Dominions are autonomous communities, within the British Empire, equal in status and in no way subordinate to one another in any aspect of their domestic or external affairs. Though united by a common allegiance to the British Crown, they are freely associated as members of the British Commonwealth of Nations. Every Dominion is sovereign and independent both in its internal affairs and external relations. It has voluntarily accepted the membership of the Commonwealth. The white Dominions, like Canada, Australia, have accepted this membership for racialistic and imperialistic considerations, while the 'coloured' Dominions, like Ghana or Bharat, have done so for certain national advantages. In the case of India the Constitution was not given by British Parliament and the President is not appointed by the British Crown. So its relation with the Commonwealth is still weaker than that of the 'white' Dominions. In short, the British Dominions enjoy full internal and external freedom. They must, therefore, be regarded as sovereign States.

(e) Municipalities and other local self-governing bodies:

Is a municipality, like Lahore Corporation, a State? No, it is not. Though the local self-governing bodies possess the three features of the State, viz., population, territory and a governing body, yet they are not sovereign. They exercise delegated powers from the Central Government, which is really supreme and final in authority. In short, they lack sovereignty. Hence they are not States.

(f) Ancient city-States and Modem mini-States:

In ancient Greece and Rome, the States were no larger than a city or town, called 'polis' or 'civitas' in Greece and Rome respectively. It usually comprised a few thousand citizens, besides slaves and foreign residents, and extended over a small territory and villages around the city or town. In spite of its small size and population, the ancient city-State exercised all powers and sovereignty of modern nation or country States, which contain large populations and extend over vast areas.

There are a few tiny city-States even in the modern times, like Monaco on the coast of France. But they are not States in the rea

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they are not recognised as such by other States of the world. They have no place or position in International Law and relations.

In recent times, however, especially after the Second World War, several small-sized States have come into being in former colonies and dependencies of the Western Imperialisms, as we mentioned above. A few of them, like Singapore, Kuwait, are even of city-size dimensions. They might better be called 'mini-States' or 'pigmy' States, as a Secretary-General of the U.N.O. described them. They are, however, full-fledged States are internationally recognised and are members of the international bodies, like the U.N.O. Their populations are a couple of lakhs. The strangest development in this respect is the attempt of a tiny island in the Caribbean Sea, off the coast of Central America, called Anguilla, to become another 'mini-State' though its population is no more than 16,00 persons. Presently its former colonial master, Great Britain, is restraining its efforts to become a sovereign State. But if it succeeds in its independence struggle, Anguilla will become the tiniest of the 'mini-States' in the world to-day. It is, on the whole, an interesting experiment in the evolution of the States in the modern times. But it seems to be a *reductio ad absurdum* of the modern State, as shown by the fate of such tiny States as Bhutan, Sikkim, Maldives, and others, which are subjugated by India, their powerful neighbour.

STATE DISTINGUISHED FROM GOVERNMENT

In popular discussion, the terms 'State' and 'government' are often used interchangeably; the one is used for the other. The two are often confused together. There is a celebrated saying of a French King, Louis XIV,"I am the Stat". What he meant was: "I am the Government." Let us now distinguish the State from the government, a distinction which was first made by the famous French thinker, J.J.Rousseau.

1. *The State is abstract, the government concrete.*

The State is an abstract concept, which cannot be perceived by our senses. It comprises of four elements. All States are identical, because they must consist of the four essential elements. The government is a concrete term, which refers to a group of persons who can be seen exercising supreme authority.

2. *Government is a narrower term than the State.*

The State consists of the total population which lives in a particular territory. But the government means only a few persons who administer it. Every citizen is a member of the State, but he or she is not necessarily a member of the government, unless he or she is elected to the legislature or becomes a minister or a judge, etc.

3. *The State is permanent, the government is temporary.*

The State has the quality of permanence. The whole world is divided into a certain number of States, each occupying a portion of territory on the globe. Hence it is a permanent association. On the other hand, the government is temporary. When one government falls, either by election or revolution, another is formed, but the State continues to remain the same, provided revolution does not bring about a political transformation, in which case a new type of State comes into being.

4. *Sovereignty belongs to the State, not to the government.*

The State is the sovereign community, politically organised, whereas the government is only an agent of the State. The government exercises such authority as is given to it by the State through its constitution. The relation between the State and the government is like that of a principal and his agent.

5. *Territory is an essential characteristic of the State but not of the government.*

The State cannot exist without the territory, but the government has no reference to territory; it refers to persons or groups of persons who exercise political power or authority.

6. *The State is an association; the government is an organisation.*

The State is an association of human beings for realising common ends or purposes, whereas the government is a machinery or organisation for realising the purposes or ends for which the State exists. It is the government which carries out the purposes of the State. That is why one cannot imagine a State without the government, which expresses the will of the State.

7. *The individual can have rights against the government, but not against the State.*

STATE AND SOCIETY

The two terms, State and society, are sometimes used interchangeably. Ancient Greeks and modern idealist thinkers make no distinction between the two. However, there are some differences between them, as shown by both Sociology and Political Science. These differences are as follows:

1. ***Society is a wider term than the State.***

Society is defined as "the complex of organised associations and institutions within a community". It means that all the relations which exist between human beings, whether social, economic, religious or political, are social. The State is only one of these many relations. They are those relations which exist between the rulers and the ruled. They are the product of government. MacIver has rightly remarked, "There are social forces, like custom or competition, which the State may protect or modify but certainly does not create; and social motives like friendship or jealousy, which establish relationship too intimate and personal to be controlled by the great engine of the State".[25]

2. ***State has territorial reference, but not society.***

Territory is an essential element of the State. If there is no territory, there will be no State. But "society has no references to territorial occupation: it refers to man alone, and not to his environment". For instance, though Islamic society extends over several countries of Asia and Africa, yet they are distinct States. Some of the social organisations and associations go far beyond the boundaries of several States, e.g., the Red Cross Society, or the Rotary Club. In a sense, there is only one human society all over the globe, which is, however, divided into more than a hundred and fifty States.

3. ***State is sovereign, society is not.***

One of the basic differences lies in the fact that the State is sovereign; it exercises coercive authority, and enforces its laws and orders by force. But society has no coercive power to punish those who do not observe its customs and rules. It appeals and persuades its members to observe its rules. Society is based on voluntary co-operation. Its energy is goodwill. But the State is based on coercive action, its energy is force and its method is rigidity of laws.

4. The State cannot exist without a government but a society may not be politically organised. There were societies before the State came into being. And there may, in future, be a society without the State. Even today, there are some simple communities, which have no State, e.g., the tribes of the Eskimos. They are known as "Stateless societies". The term society applies to all organised and unorganised human communities. A tribal people have a society, but may have no State.

5. ***The State and the society differ in purpose.***

The State exists for one single purpose of maintaining peace; society exists for a number of purposes, "some great and some small, but all, in their aggregate, deep as well as broad".

Their inter relation.

In spite of their differences and distinctions the State and society are interrelated. As Prof. Barker says: "They overlap, they blend and they borrow from one another". The State is the highest form of social organisation. It provides the framework of the social order. According to Laski, the State is a way of regulating human conduct. "Any analysis of its character reveals it as a method of imposing principles of behaviour by which men must regulate their lives". A well-ordered society cannot exist without the State, because it is the State which binds the individuals to certain rules of outward conduct. Society is held together by the State.

Their interrelation should not, however, be carried to an extreme. If the State endeavours to regulate every aspect of social life and relationship, it will become despotic and tyrannical, and destroy the liberty of the individual. It is for this reason that the two terms, State and society, should be clearly distinguished. 'To identify the social with the political is to be guilty of the grossest confusion", writes MacIver, "which completely bars any understanding of either society or State".[26] It will justify State interference in all aspects of human life. It will make the State an end and a means to an end. The State is really a means rather than an end in itself. An omni-competent State will really become an incompetent State. Hence society and State must remain distinct and separate in nature, functions and ends.

STATE AND ASSOCIATIONS

An association is a group of persons who have a common purpose or purposes for which they organise themselves, it has, therefore, three elements; namely, a group of people, a common purpose or purposes, and common rules which organise the activities of the members. At crowd of people in the bazaar is not an association, because they have no common purpose and rules. A school, a university, a Trade Union, a church, or a literary club, etc. are associations. The State too is an association. But it is different from other associations, as shown by the following features:

1. ***Associations are voluntary, while the State is a compulsory association.*** A person can become member of several associations, but he or she will necessarily be a member of one State, in which he or she is either born, or which he has adopted as his or her country. He can withdraw from

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[26] Ibid, p.4

the membership of any association as he likes, but he cannot leave his State without its permission.

2. *The State is a permanent association, while other associations are not necessarily so.* Some of them last longer than other. For example, the Roman Catholic Church has existed for about 2,000 years. But most other associations are temporary. They cease to exist when their purposes are achieved. The State continues to exist for long time. It can be destroyed by conquest, revolution or decay. For example, the Mughal Empire ceased to exist when overthrown by the British and the Roman Empire or the Abbasid Caliphate ceased to exist when they decayed and disintegrated into several succession States.

3. *The stole and associations differ in their purposes.* All associations have definite and limited purposes and interests. The State has the general purpose of maintaining Peace and order and promoting the happiness and welfare of all of its citizens. The State is essentially and order-giving organisation.

4. *The State is sovereign and possesses coercive power to compel obedience to its law by punishment.* Associations are voluntary and cannot compel obedience to their rules by fear and force of punishment. They may impose a fine, or expel the recalcitrant members, but the State alone can impose punishment on law recalcitrant members, but the State alone can impose punishment on law breakers to the extent of life imprisonment or death. In other words, State has unlimited power, while the associations are either political bodies, or they possess powers, defined and limited by the authority and law of the State.

5. *The State controls all other associations, while none of them can control the State.* It is supreme over all of them, because it is sovereign, it is an omnipotent association. No other association can claim such powers.

6. The State has also the power to create any association and prescribe its powers and functions, e.g., it sets up universities.

7. *The State is a territorial association.* It includes several other associations within its boundaries. But other associations are not territorial in structure and purpose. Some of them exist within the confines of a State but other may extend beyond its boundaries. The jurisdiction of the State ends at its frontiers, but a voluntary association may regularize the conduct of its members dwelling in several States, e.g., Red Cross, Rotary club or Universal Postal Union.

Revolt against the use of the term 'State government, sovereignty'

In the nineteenth century, when the science of politics rally came into being, political scientists, with their legal-institutional approach, "accepted a more or less rigid concept of the State as a component of specific mechanisms of government" They applied this term to the States which existed in Europe and to those which existed in ancient Greece and Rome. Accordingly, these European States possessed the attributes of well-defined territorially sovereignty. They also did not bother to study whether there were States in Asia and Africa, like those of the European States. Political Science was then only concerned with States in the Western world, i.e. Europe and North America.

Discarding the term State.

Reaction against the use of the term "State" began early in the twentieth century. It was due to the influence of such social sciences as psychology, anthropology and sociology, as well as biology. It gave rise to the theories of functional and operational systems. Functional approach is derived from sociology and anthropology. It emphasizes the fact that a social or political system is a process, and therefore not something static; secondly, that it has no end or goal, and thirdly, that the activity of one part of a system is related with that of the other. Hence, if one part is affected, the whole system is affected too. A system is, therefore, an integrated whole, or a structure. It may be noted that the third element is in contradiction to the first two, for an integrated whole is necessarily static: it militates against change. Anyway, this approach is known as functional-structural analysis.

Side by side with the functional approach to politics was the influence of the operational research. The result of functionalism and operationalism was the virtual elimination of the term "State" and its "elements". Indeed, the "State" was believed to be too complex and too unwieldy a subject for operational research. At this stage came the influence of behaviouralism in the middle of the twentieth century. Behaviouralism was derived mainly from psychology, emphasized the micro processes of politics, especially the decision-making processes. The result of these three influences, viz., of functionalism, operationalism and behaviouralism, was the virtual elimination of the term State and of its elements from political science. "As a result" writes Morton H. Fried, "it is impossible to offer a unified definition of the State that should be of satisfaction to those seriously concerned with the problem." Instead, they prefer to use the term "political system". Let us now see how these political scientists refute and reject the "content" or elements of the State.

1. Territoriality:

As defined above, the term "State" consists of four elements, viz. government, territory, people and sovereignty. The third element, people, cannot be eliminated at all from any political organization. Government is so essential an element in the concept "political scientists attack the remaining two elements, namely territoriality and sovereignty.

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Although territory is an essential "element of the modern State, it is not found in the simple societies of the primitive times, such as the tribal or kinship societies of the past and present times. In the past ages, nomadic tribes used to wander all over the earth without being bound to any particular place or territory. We may further add that in the medieval kingdoms and empires in Asia and Africa, and in pre-Columbus Americas, although the concept of territory was known, but the idea of well defined borders or frontiers did not exist; they constantly shifted from place to place, with the result that whole districts, or territories, wee sometimes regarded as part of one or the other kingdom or empire. The same was the case in Feudal Europe. It was with the rise of the modern States in Europe during the 15th and 16th centuries, that the concept of clearly well-defined borders first arose. When the European States acquired colonies in Asia and Africa, they imposed well-defined frontiers on their colonial possessions. Accordingly, the behaviour a lists and some other present-day political scientists reject the concept of territoriality as too ambiguous for purposes of political analysis.

2. Sovereignty:

Modern political scientists attack the concept of sovereignty also. According to them, there are various levels of administrative power of decision-making in a political system. In the kinship societies, the decision-making power was both customary and parochial, without any supreme authority in them. In the modern States, there is a supreme authority. But it exercises no absolute, unlimited and unconditional sovereign authority over the lesser administrative units. Instead, its function is to maintain channels of communication between various levels of authority in the State. Accordingly, the emphasis should not be on sovereignty but on legitimacy of authority, which makes people to accept it as rightful and legitimate.

The result of these attacks is that the concept of "State" is virtually discarded by some political scientists in the present times. But its repudiation has led to a strange phenomenon. What these political scientists have thrown out from the front door, they bring back through the backdoor. So the term "State" is sometimes used by them, although half-heartily. They define it in circumlocutory manner. For instance, Robert A. Dahl, a behaviouralist political scientist, first defines government and then equates political system with the State. He says. *"The Government is any government that successfully upholds a claim to the exclusive regulation of the legitimate use of physical force in enforcing its rules within a given territorial area."* He thus recognises the physical force, enforcing its government's rules. But this is really what sovereignty stands for, and exercised over a given territorial area, which is territory. He then adds, "The political system made up of the residents of that territorial area and the

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Government of the area is a State." Thus, the behavioural political scientists also recognise the "State", though in a roundabout manner. According to them, State = political system = government + residents (people) + territorial area + exclusive regulatory power. Obviously, this is what the State is, as defined by the earlier writers. The advantage of the new definition of the State is one: it can indicate when the State will begin to vanish. Dahl writes, "We can be reasonably sure of one thing. When large numbers of people in a particular territory begin to doubt or deny the claim of the Government to regulate force, then the existing State is in peril of dissolution". In Political Science, this condition of a State is known as *"cries de regime"* or crisis of the regime. It portends the coming revolt or revolution against a particular State. It means that the behaviourist concept of State has made it an operational concept, that is, research in political analysis has become possible. This term "State is again rehabilitated in Political Science, but has been made operational, something which it has lacked in its earlier definition. This enables the political scientists to anticipate political change or development.

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Chapter 13

Islamic Concept of the State

In the previous chapter, we have studied the traditional and modern concepts of the State. We shall now study its Islamic concept.

Nature of Islamic Polity:

Islam is a complete code of life. It means that it takes a comprehensive view of life and covers all its aspects and phases. Nothing in human life and behaviour is outside or beyond Islam. Unlike Christianity which declares: "Render unto Caesar what is Caesar's and unto Christ what is Christ's", and thus separates religion from politics and Church from the State, Islam does not believe in the separation of religious room political life. Hence there is no secularism in Islam, or rather the secular or worldly is made a part of the sacred or spiritual. In other words, Islam takes an integrative view of human life, which it declares to be a preparation for the life hereafter: the life in this world is meant for preparing for the eternal life of the Next World, which is everlasting. The concept of the State in Islam should therefore be understood on the basis of this integrative principle of Islam.

1. *Sovereignty of Allah:*

Sovereignty of Allah is the fundamental principle of the Islamic concept of State. The Holy Quran says: 'To Him belongs the dominion of the heavens and of the earth. It is He who gives life and death, and He has full knowledge of all things."

Again: "He is the First and the Last, the Evident and the Imminent *(Zahir wa Batin)*, and he has full knowledge of all things."

Again: "The command is from none but Allah *(Innil hukmu illa lillah)*". And again: "Allah has power over all things *(Kulli sh'ai-in Qadir)*".

In short, sovereignty in Islam does and can belong only to Allah and none can claim to be sovereign. Allah is sovereign, because He is Omnipotent, Omniscient, Omni competent and Omnipresent; The principle of Allah's sovereignty does not recognise the possibility of dictatorship, absolute monarchy or autocracy in an Islamic State. It is because the basic allegiance of the Muslims is to God and His Law, to which even the head of the State is subservient.

Present every-where

(ii) knowing everything

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2. *Khilafat:*

The Holy Quran proclaims the Vicegerency of Man. It says "And when thy Lord said unto the angels: Lo! I am about to place a vicegerent *(Khalifa)* in the Earth." It says further: "Say, O Allah! Owner of Sovereignty! Thou givest sovereignty unto whom Thou wilt, and Thou withdraw sovereignty from whom Thou wilt. Thou exactest whom Thou wilt and Thou abasest whom Thou wilt. In Thy hand is the good. Lo! Thou art able to do all things."

The institution of Khilafat or Caliphate came into being after the demise of the Holy Prophetﷺ. The Khalifa was also known as *imam*, for he combined both political and religious duties of leadership of the Muslim community both in matters of the State as well as of religion. "Under the sovereignty of God and the authority of His law, the Shariah of Islam, the caliph is the temporal ruler of the State and the defender of the faith": writes E.I.J. Rosentahl. "Constitutional law in Islam", he writes further "is based on the theory of the Khalifa". However, a French writer, Gaston Bouthoul, asserts that "the theory of Caliphate has always been very controversial". If by controversial the meant as of doubtful existence, he is obviously wrong. Muslim jurists have always recognised the institution of caliphate as a legally valid constitution of the Muslim community or Ummah, as we shall presently explain when we shall consider the theories of caliphate, as expounded by al-Mawardi, al-Ghazali and Ibn Khaldun. In practice also, the institution of caliphate had a very long history. It had existed from 632, when Hazarat Abu Bakr became the first Caliph in the history of Islam, down to 1924, when the Caliphate was formally abolished by modern Turkey under Kamal Ataturk.

3. *Government by consultation:*

Mutual consultation among the Muslims is a commandment of the Holy Quran and an injunction of the Sunnah of the Holy Prophetﷺ. The Quran says in the Surah 42 "When they are said to put their trust in God, when they are regarded as shiners of evil, when they are said to be brave defenders of their rights, they are praised for taking each other's counsel in time of need." It further says that "Not only that but the Apostle, while he is enjoined to trust only in God when he has made up his mind, is also advised to consult even those who are his enemies at heart". (Quran III: 159) It was also the practice of the Holy Prophetﷺ who consulted his Companions in all matters of State. The institution of *Majlis-e-Shoora* was developed by the Khulfa-e-Rashideen afterwards. This institution is the foundation of democratic government in Islam.

4. ***Obedience of the Awulal Amr or the Ruler:***

The Qur'anic injunction calls upon the Muslims to obey the *Awulal Amr* or the supreme commander among them.

5. ***Equality of all mankind:***

The fundamental doctrine of Islam is the equality of all mankind. It is implied in the basic Islamic teaching of the *Tawhid* or belief in the Unity of God. As Allama Iqbal puts it, "the essence of Tawhid as working idea is equality, solidarity and freedom." Accordingly, in Islamic polity there is no distinction or discrimination of man and man on the ground of race, colour, language, profession or country.

6. ***Order well and punish wrong:***

Islam enjoins the State to maintain morality. It asks the ruler to order well and punish wrong: *amr al-maruf wa'l nahi-an-al munkar.* The Quran also requires the Muslims to' enjoin upon each other to do well and prevent others from committing wrong. These Qur'anic verses are very significant in as much as they declare that the chief objectives of the Islamic State is to be the enforcement of duties on the Muslims.

7. ***Payment of Zakat:***

Collection of Zakat is one of the essential functions of the Islamic State. It is also the primary duty of the Muslims, who are enjoined to pay it as dutifully as they perform five time prayer.

Theories of the Khilafat (Caliphate):

As we have said above, Khilafat or Caliphate was the political organisation of the Muslim community under the four Orthodox Caliphs. When the Umayyad dynasty (661-710) came to power in 661 A.D./32 A.H., it kept its outward form but changed it into a monarchy. The Caliphal structure remained the same under the Abbasids (750-1258), but with one important change: they upheld the authority of the Shariah. Under the Abbasids, the Caliph remained the political and religious leader of the Muslim Ummah. But when the Abbasid Caliphate began to decline from about 940 A.D, the Caliphal authority was challenged by rival Caliphs in both the eastern and western provinces of the Caliphate, while independent Muslim rulers or sultans usurped the political authority of the Abbasid Caliphs. This critical situation made several Muslim political thinkers to expound various theories of the Caliphate. Among them al-Mawardi, al-Ghazali and Ibn Khaldun were most important.

Al-Mawardi's Theory of the Khilafat:

Abu'l Hasan Ali ibn Muhammad al-Mawardi (975-1058 A.D/364-450 A.H) was the first political thinker in the history of Islam. He was a

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Chapter 15

Sovereignty

Political Science revolves around two poles, viz., the sovereignty of the State and the liberty of the individual.[38] In order to understand the one, we must know the other. We begin with the study of the sovereignty.

We have said in a previous chapter that the most important characteristic of the State is sovereignty, which distinguishes it from all other associations. Modern State is a sovereign State. There can be no State without sovereignty. And yet the term 'sovereignty' is analyzed and explained in bewilderingly different meanings and theories. We propose, firstly, to give a general concept of sovereignty, then its theories and finally the pluralistic attack on its very concept.

General Concept of Sovereignty.

The State is a politically organised society of individuals and associations, institution and groups. In order to preserve social unity, peace, and progress, the State regulates and co-ordinates their activities, interests and relations by means of laws, customs, and authority. Sovereignty means the supremacy of the will of the State, as expressed by its laws, over all individuals and associations within its boundaries. It means the supremacy of the authority of the State within its territories and against all powers and authorities beyond its frontiers. It is a supreme law- making power of the State.

Various Definitions.

Sovereignty has been variously defined by the writers. Aristotle defined it simply as the 'supreme power' in the State. Jean Bodin (1540-96) defined it as "the supreme power over citizens and subjects, unrestrained by law" Hugo Grotius defined it as "the supreme political power vested in him whose acts are not subject to any other, whose will cannot be over-ridden". The English jurist, Blackstone, says, "it is the supreme, irresistible, absolute, uncontrolled authority in the State." Burgess defines it as the "original, absolute, unlimited power over individual subjects and over all associations of subjects." Friderick Pollock writes that sovereignty is "that power, which is neither temporary, nor delegated and nor subject to particular rules which it cannot alter." The famous definition of the English

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[38] **"The whole of Political Science springs from the logic of the law of the Correlation of Freedom and Authority" (proposition 15). *Systematic Politics* by George E Gordon Catlin.**

jurist, John Austin, is: "If a human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society."

Willoughby says simply 'Sovereignty is the supreme will of the State"; while Duguk defines it as "the commanding power of the State; it is the right to give unconditional orders to all individuals in the territory of the State. Garner defines it as "that characteristic of the State by virtue of the which it cannot be legally bound except by its own will or limited by any other power than itself."

We may define sovereignty as "the supreme power or authority of an individual or a group of individuals which is unquestioningly obeyed by the bulk of people in the State, as laid down by its constitution and law."

It is interesting to mention that we have not quoted the definition of sovereignty by any political scientist of the behaviouralist school of Political Science. Like the concept of the State, they do not recognise the concept of sovereignty also, for reasons which we shall explain at the end of the next chapter)

From these definitions of the sovereignty we infer the following points about it:

(a) It is the supreme, unlimited and absolute power of the State,

(b) It is the supreme power to make laws and enforce them.

(c) Its authority cannot be resisted or disobeyed by any person or body of person within the State; nor does it obey any power outside its boundaries.

(d) No limitations can be placed on the supreme will of the State, except those which it has imposed itself.

(e) The supreme law-making power is itself unlimited by law; it cannot be legally bound, except by its own will. As Leacock puts it, "Somewhere within the State there exists a certain person or body of persons whose commands receive obedience".

(f) The basis of sovereignty is the use or the possibility of use of coercive power of the State to compel obedience to its laws or commands. "The basis of State sovereignty", said Laski "is the contingent power to use the armed forces of the State to compel obedience to its will. And it is the possession of this legal right to resort to coercion which distinguishes the State from other associations." This is, in short, the meaning of sovereignty which indicates its attributes or essential features and qualities.

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(ii) unable devide

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Attributes of Sovereignty.

The chief characteristics or attributes of sovereignty are: (i) absoluteness, (ii) indivisibility, (iii) all-comprehensiveness or universality, (iv) permanence, (v) unity, or exclusiveness, (vi) inalienability, and (vii) imprescriptibility.

(i) Absoluteness or Unlimitedness:

It means that the power or authority of the State is absolutely supreme and unlimited over all persons and associations within its territory and against all powers and authorities outside its frontiers. The State is both internally and externally supreme. It is omnipotent and omni-competent. It is subject to no legal limitations, internal or external. Sovereignty cannot be restricted, for the power that imposes restrictions would then itself become sovereign. Sovereignty is supremacy. Therefore, when a State is not supreme, it is not sovereign, and when it is not sovereign, it is not a State. Certain restrictions or limitations on the supreme power of the State are pointed out by writers and philosophers, but they are self-assumed by the sovereign. Although morality, religion, international law and treaties, prudence, expediency or considerations of policy may make a sovereign to refrain from a course of action, yet his power is legally unrestricted and unlimited

The attribute of absoluteness is the fundamental and most important characteristic of sovereignty. All other attributes are really its corollaries. Moreover, it is also the most controversial feature of the monistic theory of sovereignty. It is contended that sovereignty is not absolute, that there are certain limitations on it. We shall discuss these objections hereafter.

(ii) Indivisibility:

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Sovereignty cannot be divided. Every State must have one supreme power in it. It is impossible to have two or more equally supreme powers in the same State. If so, one shall become supreme sooner or later. We agree with John C. Calhoun when he says that "to divide sovereignty is to destroy it". Sovereignty is an entire thing or nothing. The State is unity; otherwise there will be not one but several States. There cannot be half sovereignty, as there cannot be half a triangle or half a living body. Jellinek has rightly remarked that- the notion of a "divided, fragmented, diminished, limited, relative sovereignty" is the negation of sovereignty.

The attribute of indivisibility of the sovereign power of the State is the second important and fundamental attribute. It is also subjected to several objections and criticism. It is attacked by the pluralists. It is also questioned by the federalists because in a federation, sovereignty is apparently divided between the federal and provincial governments. We shall also discuss this problem afterwards.

(iii) All-comprehensiveness or Universality.

involved everyone

Sovereignty of the State is all-comprehensive or universal. It means that it extends to or comprehends all persons and associations within its territories. No one is exempt from obeying the laws of the State or commands of the sovereign. The authority of the State is co-extensive with its territorial jurisdiction. It covers all without any exception. No person, association or institution, however universal, can claim exception from obedience to the authority or power of the State, as it was once claimed unsuccessfully by such religious bodies as the Christian Church or the Pope.

Extra-territorial Sovereignty:

There seems to be one exception to the all-comprehensive and universal power of the State; it does not extend to the diplomatic officials and embassies of foreign States within its territories. But it is not so. The sovereign has himself extended this concession to the diplomatic representatives of other States for the sake of international co-operation and courtesy. It is necessary for civilised intercourse between sovereign States. But what the State gives, it can also take back. By virtue of its sovereignty, any State can withdraw the diplomatic immunity of the representatives of the foreign State, if it so likes. It is a concession and not a compulsion. Hence, the extra-territorial rights and concessions of the foreign diplomats are no exception to the rule of universality of the sovereign power of the State.

(iv) Permanence.

Sovereignty of the State lasts as long as the State continues to exist. This attribute points out the basic distinction between the State and the government. The State is a permanent association; government is a temporary organization. The government may change, but the State continues to exist. When a king dies, another steps into his shoes, because the State continues to exist. The death of a king does not mean the destruction of the kingdom. This is the real meaning of the English saying; "the king is dead: long lives the king". It is the sovereignty of the king that lives long, though the individual king does not. Only by the destruction of the State itself can sovereignty be destroyed. Permanence, therefore, means the continuity or perpetuity of the sovereign power of the State, which is unaffected by governmental changes.

(v) Exclusiveness.

By exclusiveness we mean that quality by virtue of which there can be only one sovereign power in a State which is entitled to be legally obeyed by its citizens. One sovereign excludes another. It is nicely illustrated by the Persian proverb. "There cannot be two kings in a kingdom". This quality of sovereignty is really derived from its two other attributes, absoluteness and indivisibility. It is based on the principles of the

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unity of the State, which means that the State is a single unit, ruled by one sovereign. To say otherwise would mean to admit "the possibility of *imperium in imperio*"--'a State within a State. But this is impossible. Sovereignty cannot be divided or shared between two or more persons. When two persons ride a horse, one must sit in front and hold the reins. It is said that ten beggars can sleep in a blanket, but two kings cannot live in a kingdom. The reason is obvious: none of the beggars is sovereign. And if one of them becomes a sovereign, he will surely drive out the others, or, if he is a clever beggar, make them his subjects!

(vi) **Inalienability.** Unchangeable unchangeable

By this we mean that the supreme power cannot be alienated or taken away from the personality of its holder without destroying it. To alienate or give away sovereignty is to destroy it. "Sovereignty", said Lieber, "can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life or personality without self-destruction". Sovereignty is non-transferable. When a State cedes away its sovereignty, it ceases to exist, and some other State may come into being in its place. It should be noted here that the quality of inalienability relates to the sovereignty and not to the territory of the State. A portion of territory can be ceded without affecting the sovereignty over the remaining portion, in which the State remains as supreme as before. For instance, a" Pakistan was carved out of the territory of the British India, as sovereign State.

(vii) **Imprescriptibility.** unabolition/unended

This characteristic follows from that of inalienability. It means that sovereignty is not lost even if its holder does not exercise or assert it for a long period of time. The State remains sovereign, whether it actually asserts its supreme power over a period of time or not. Once a Sovereign, always a Sovereign. Here the constitutional law differs from the private law. In private law, if a person does not assert his ownership over a piece of land or house for, say, 12 or 20 years, he loses his ownership of it. This is called the principle of prescription. But sovereignty is not lost by prescription. It is imprescriptible.

Limitation on Sovereignty.

Is the sovereign absolute? Many thinkers such as Bodin, Hobbes, Rousseau, John .Austin, Dicey, Jellinek, have asserted that sovereignty is absolute, unlimited, original and supreme power of the State and that, as the State is a unity, there can only be one supreme authority in it. But this concept of monistic sovereignty is contested and rejected by others on various grounds. They point out several limitations on it. We shall consider them one by one.

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(i) Moral limitations.

Legally the State is competent to do everything, but in practice it cannot do many things. What is legally possible may be morally impossible. In Britain, for instance, parliament is, "from the legal point of view", the sovereign legislative power in the State. But it cannot make laws and the executive cannot enforce them, if- they violate the moral principles and values upheld by the British people "If the legislature decided that all blue-eyed babies should be ' murdered", said Leslie Stiphen, "the preservation of blue-eyed babies would be illegal, but legislators must go mad before they could pass such a law and subjects be idiotic before they could submit to, it". However powerful and despotic or absolutely supreme a sovereign may be, he cannot be successful in flouting the moral or religious sentiments, beliefs and inclinations of his subjects. Legally he is all-powerful, morally he is not so. "Legally an autocratic Tsar may shoot down his subjects before the Winter Palace in Petrograd, but morally it is condemnation that we utter". There is, therefore, a vast difference between what Dean Pound had admirably called "law in books" and "law in action". Hence a wise sovereign will not make laws which flout moral sentiments and convictions, violate religious beliefs, or interfere with long-established customs and traditions of people or their sense of justice and good. Otherwise, he would provoke opposition, bitterness and even revolt or revolution. On the contrary, laws are easily enforced when they conform to the generally accepted moral, religious and social ideas and customs of the people:

openly disgrace

(ii) Natural limitations.

The sovereign cannot do what is naturally impossible. For instance, he cannot order the sun or the moon to rise, or make a law that the sun shall always rise at 6 o' clock or from the south. If a sovereign would order so, he will be sent to the lunatic asylum. Such are the natural limitations on the absolute competence of the sovereign's powers.

(iii) Human limitations.

There are several things which a sovereign cannot do; firstly, because he is a human being, and secondly, because he has to deal with human beings. Gilchrist has called them "the limits of human endurance", while Dicey has called them the internal limits, inasmuch as they rise from the very nature of the body or person exercising sovereignty. The powers of a sovereign are inevitably limited by the strength or weakness, capacity or incapacity of his character, mind, body and personality and also by his education, knowledge, religion, morals and environment. The same is the case of his subjects or citizens. They are also conditioned by their environment, education, religion, and moral value system, and determined by their habits, character, mind; body and personality. So, even if they are willing to obey a law, they may be physically or mentally incapable to do so. For instance, the sovereign can make a law that [illegible]en and children will work at night and sleep in day-time. But how can he enforce it? Similarly, a ruler can make a law forbidding the people to hold a particular opinion because it is 'a dangerous opinion' But he is unable to enforce that law, because the people may continue "to hold it in their heads", while the sovereign can only punish them when they will actually write or talk about it. Expediency and common-sense would tell him not to make such a law. Such are the human limitations on the sovereign power of a ruler. "They are," as Gilchrist says, "limits of individuality, expediency and common-sense".

(iv) Constitutional limitations.

Some writers also point out constitutional limitations on sovereignty. These limitations are, firstly, the written and rigid constitution, and, secondly, the provision of fundamental rights in the constitution, and such other provisions in the written constitution which the legislature or the government is expressly forbidden to change, such as the parity principle in federal constitutions. The structure of a State, with a written and rigid constitution, cannot change except by a long and difficult process of amendment, which is a check on its sovereignty. It is said that in such a State, there are two kinds of laws, the constitutional law and the ordinary law. The constitutional law is superior to- the ordinary law, which must conform to it or be declared null and void. So, the legislature which makes ordinary law, and cannot amend the constitution, is limited in its legislative power. Similarly, its power is limited by the other provisions of the constitution, such as the fundamental rights, etc.

These limitations are, however, no limitations on the sovereignty of the State. Firstly, the provisions of a constitution are limitations not on the State but on government. They require the government and its various organs to remain within these provisions, if their acts and laws are not to be declared unconstitutional. The State, that is, the people who can amend the constitution, remain as supreme as before, because they may amend it, if they so like. It is a self-imposed restriction and, therefore, not a limitation because it can be removed at any time. Moreover the distinction between the constitutional law and the ordinary law is not fundamental. The difference is procedural and not substantial.

(v) Limitations of International Law.

International law, conventions, agreements and treaties are regarded as another limitation on the sovereignty of the State. Bluntschli puts it in these words: "There is no such thing as absolute independence—even the State as a whole is not all-mighty, for it is limited externally by the rights of other States and internally by its own nature and the rights of its individual members". But, like the "constitutional limitations, the international limitations are not legal limitations. They are merely self-limitations which the sovereign States observe in their intercourse with on another. There is no international authority or law-court to interpret and enforce international laws. They are self-imposed and can be repudiated by the State any time. This is shown by such behaviour of the States as when they tear away treaties as mere scraps of paper or when international conventions and rules are violated, and, above all, when a war is declared. It proves that the State is free to abide or not to abide by the international law. International law is rightly regarded as not a law in the strict sense. It is merely a code of international morality which the States generally find it expedient to observe.

Two Aspects of Sovereignty.

(i) Internal Sovereignty.

A distinction is usually made between internal and external sovereignty, especially by the writers on International Law. Internal sovereignty means the supreme and final power to command all persons within the territory of the State. Its will is absolute over all persons and associations. It issues orders to all men an:' to all associations within the area of the State and receives orders from none. Its will is subject to no legal limitations of any kind. "What it proposes is right by the mere announcement of intention," as Laski puts it.

(ii) External Sovereignty.

It means the freedom or independence of the State from any control, compulsion and interference by a foreign State or power It means in other words, that the will of the State is supreme as against oil foreign wills treaties and International Law do not limit the supremacy or external sovereignty of the State, because they are self-imposed limitations. In short, external sovereignty means independence of the State. It is necessary to remark that while internal sovereignty is a positive exercise of authority, external sovereignty is merely its negative aspect. External sovereignty does not mean that the State has the right or power over other States. It only means that it will not submit to their interference or command. That is why it is suggested by some political scientists that it is better to use the word "independence" instead of "external sovereignty". Sovereignty is essentially internal power, which can exist only when it will not tolerate foreign intervention in it in any form. *No State comes into being with the goodwill and by the grace of other States, but in spite of the-ill will and hostility* of most of them. Hence every State remains independent only so long as it is internally strong and supreme. To conclude, sovereignty means supreme, unlimited and absolute power in its two aspects, internal and external.

State in crisis.-

'De Jure' and *'De Facto'* Sovereignty.- States sometimes become victims of political troubles, called revolts, rebellions, *coups d'etat*, revolutions, wars and foreign aggression. A rebel leader, a revolutionary

party, a military junta, or a war leader, a priest or a prophet may overthrow the established government or destroy its power from a portion or whole of the country. The State is then in a crisis. It is to explain such times of crisis and transition, that the two terms, *"de jure"* and *"de facto"* Sovereignty, are used. (*"De jure"* means "by law" and *"de facto"* means 'in fact'.)

'De Jure' sovereignty means the authority of the ruler or government which is recognised by law as supreme. It is, therefore, the legal sovereign. But, in times of war, civil war or revolution, it may not be actually obeyed by all or part of the people or country. *'De facto'* sovereignty means the authority of the person or agency which can in fact or actually compel obedience. So, *de jure* sovereign has the right or law on his side, while *de facto* sovereign has might or physical force. Sometimes the *de facto* sovereign bases his claim to obedience on law, but it is not yet universally accepted. Hence Lord Bryce, the English political writer, defines *de facto* sovereign as "the person or body of persons who can make his or their will prevail whether with the law or against the law: he, or they, is the *de facto* ruler, the person whom obedience is actually paid."

The crisis of the State, however, cannot last for ever. Sooner or later, either the former government or the new one subdues the other. A *de facto* sovereign becomes a *de jure* sovereign when, firstly, he succeeds in basing his might or authority on law by making necessary law or constitution, and, secondly, when his sovereignty is recognised by other States according to international law and practice. Hence a successful *de facto* sovereign, whether a dictator, a military leader, a clever priest, a revolutionary or a usurper, must become a *de jure* sovereign as well, by making necessary changes in law and constitution. Otherwise his fate is like that of Bacha Saqqa of Afghanistan who overthrew the *de jure* sovereign, King Amanullah, but was himself soon ousted from power by Nadir Shah, who became then the *de jure* sovereign by adopting a new constitution.

In a well-ordered State *de jure* and *de facto* sovereignty coincide. In other words, right and might go together. The courts recognise only the *de jure* sovereign. Good government and peace are possible only when there is no split between the *de jure* and *de facto* sovereignty. As regards examples, modern history abounds with them. The communist government of China was the *de facto* sovereign when it overthrew the former *de jure* government of Chiang Kai-shek. But since it adopted a new Constitution of People's Republic of China and was recognised by foreign States, it became the *de jure* sovereign of the new China as well. Formerly, the Nationalist Government in Algeria was *de facto* sovereign, while the French Colonial Government was its *de jure* sovereign. But as the Algerians drove out the French colonialists from their country, their National Government became both *de facto* and *de jure* sovereign.

Titular and Actual Sovereignty.

Another distinction is made between the titular sovereign and the actual sovereign. With the growth of parliamentary democracy, the king of a parliamentary State has lost the substance of power, although he is still called the sovereign head of the State. The actual supreme power is in the hands of his parliament or prime minister. It is to explain such a distinction that the two terms "titular" and "actual" sovereignty are used. A titular or nominal sovereign is one who does not actually exercise any power. For example, the King of England is a titular sovereign. He is still called "Our Sovereign Lord the King". But he is really a figure-head, a mere shadow of a great past. The same is true of the heads of the parliamentary republics, like the President of India. In such States, the real power and authority is in the hands of the actual sovereign, the parliament or the prime minister or the cabinet. In other words, the ministers decide things while the king merely signs their decisions. They rule the country, while the king merely reigns. They really use him like a rubber-stamp to sign their orders and laws. Lowell has described the change in the position and power of the constitutional king in these words: "According to the early theory of the constitution the ministers were the counsellors of the king. It was for them to advice and for him to decide. Now the parts are almost reversed. The king is consulted, but the ministers decide."

KINDS OF SOVEREIGNTY

Sovereignty is supreme power. But supreme power can be in the hands of one person or an assembly, voters and political parties, or in the hand of a nation or people. This gives us three kinds of sovereignty: viz., legal, political and popular sovereignty.

1. LEGAL SOVEREIGNTY

Its meaning:

Legal sovereignty is the supreme and final law-making power, recognised by law, and exercised by a determinate person or organ of the State. In every State there is some authority legally entitled to make laws which the citizens have to obey. Such an authority is the legal sovereign. He expresses the will of the State in the form of laws or commands. The legal sovereign is unrestrained by law in the exercise of his law-making power. His power is not limited by the laws of God, the prescriptions of religion, moral principles, public opinion, old customs, or international conventions and agreements. Whatever he decrees must be obeyed by the citizens, enforced if need be by his supreme coercive power. Whatever he orders is binding, whether it is good or bad, moral or not, just or unjust. As Hobbes puts it bluntly within the sphere of law, there is no such thing as unjust command. So justice, morality or good is what the legal sovereign has decreed by-means of his law. All rights are created by him and there is no

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right against him The law-courts apply the law of the legal sovereign and do not question its validity, even though it may be morally unsound, condemned by public opinion as 'black law and what not. So far as the source of laws is concerned, the courts and lawyers refuse to look beyond the legal sovereign.

This is the theory of legal sovereignty. It was, as we shall see later on, presented in its most precise form by the English jurist, John Austin. The law or the constitution of a State describes in whose hands legal sovereignty lies. In England, it rests with the Queen-in-Parliament. There is no legal limit to the power exercised by parliament. It has the power to do everything; except what is 'physically impossible, such as to make a man a women or a woman a man. In a Federal State, however, it is somewhat difficult to say precisely as to who is the legal sovereign or as Laski says it is practically an impossible adventure.

Criticism.

Legal sovereignty is the lawyers' view of sovereignty. As Ritchi says, "the legal sovereign is the lawyer's sovereign *qua* lawyer, the sovereign beyond which lawyers and courts refuse to look". But it does not fully explain the nature of sovereignty in the State. Behind the legal sovereign stands another sovereign power, the political sovereign, and, according to some, yet another sovereign, the popular sovereign. Some writers reject the theory of legal sovereignty as abstract and misleading. Woodrow Wilson writes, "Sovereignty, as ideally conceived in legal theory, nowhere actually exists". But it was the view of a person living in a federation.

2. POLITICAL SOVEREIGNTY

absolute powerful everywhere present

Its meaning.

Legal sovereignty is supreme but not omnipotent. Legally his will is absolute and unlimited, but politically he cannot act independently and exclusively. His will is actuated by many and varied influences and forces which are unknown to law. As Dicey says, "behind the Sovereign which the lawyers recognise, there is another Sovereign to whom the legal Sovereign must bow". He is the political sovereign. Dicey defines it thus: "that body is politically sovereign the will of which is ultimately obeyed by the citizens of the State". The political sovereign is the sum-total of the influences and forces in a State which stand behind the law.

The concept of political sovereignty is less exact than the concept of legal sovereignty. Its nature and location differ in different States. By its very nature, it is unorganized, vague, indeterminate and inexact. It may be the power of the people, the public opinion, the electorate or the dominant class or a section of the people such as the army, the landed aristocracy or a powerful priesthood. It depends upon the nature of a particular State as to

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which of these forces and influences will actually exercise political sovereignty at any particular time.

Relations of Legal and Political Sovereignty.

The problem of good government is really *one of proper relationship between the legal and political sovereignty*. In a 'direct democracy, as, for example, existed in ancient Greek city-States, the two practically coincided, because the people assembled and decided everything. The people were at once the legal and political sovereigns. But this cannot be so in the modern indirect democracies, which have representative governments, responsible to the people or electorate. The people, by voting and electing representatives indicate to the legislature, the legal sovereign, the type of laws they desire. But the political sovereign, the electorate, is influenced by the political parties, the press, public speeches and even friendly talks. In this way the political sovereign really manifests itself by voting, by the press, by speeches, by intelligent conversations and by various other ways, which cannot be easily described. It does not directly make the laws, but it lays down the conditions and terms within which they shall be made by the legal sovereign. In short, though the political sovereign is legally unknown, unorganised and incapable of expressing the will of the State in the form of laws, yet the legal sovereign will bow to him in practice and will express it ultimately. In despotic monarchy, the relation between the legal sovereign, i.e. the king and the political sovereign, is not so close and effective. Yet the king also depends upon the support of his army, his friends and class of nobles to rule. In all States, whether despotic or democratic, the legal sovereign is limited by the political sovereign. Professor Ritchie illustrated this fact by citing the example of the despotic government of the Russian Czars in these words: "the Czar of all the Russians rules by the will of his people, as much as does the executive of the Swiss Federation". The only difference is that the political sovereign in a despotic State is not as broad-based as in a democratic State.

The presence of the legal and political sovereigns in a State should not lead us to think that there are two sovereignties in it, or that sovereignty is divided into two. Really legal and political sovereigns are two different channels for the manifestation of the one and the same sovereignty or will of the State. There are two aspects of sovereignty, expressed through two channels: in its legal aspect by the deliberations and decisions of the legislative organ and in its political aspect by the votes of the electorate and the activities of the political parties, the press, and other agencies of public opinion. Law is and must be the manifestation of the will of the people. But the people cannot directly legislate. They first discuss their problems and needs among themselves, guided and influenced by the political parties and leaders, and educated and enlightened by the press and platform. Then they elect their representatives, the legal sovereign, who frames laws in

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accordance with their wishes and opinions expressed before and after the elections. Thus the legal sovereign becomes limited and conditioned by the political sovereign, although in law it alone is competent to make laws. In this way the former mirrors the opinion of the latter. If, for example, the members of a particular Parliament do not reflect it, they will not be re-elected at the next elections, but some other persons will be elected in their stead.

Criticism.

The theory of political sovereignty is criticised by Leacock on the ground that the political sovereign is difficult to locate; "the more one searches for this final authority, the more it seems to elude one's grasp". The search for him is like the quest of the philosophers for the "first cause". The voters are obviously not the political sovereign, because they are influenced by the propaganda of the political parties and the press, and may even be under the influence of selfish and crafty leaders and demagogues. Public opinion is so fluctuating and vague that it cannot be called a sovereign: it is difficult to say when it is public and when it is opinion. Furthermore, the complexion of the political sovereignty is ever-changing, vague and different in different States. "In one State," writes Leacock, "the priesthood, in another the military or landed classes, in another the personal entourage of the king or the predominant influence of the metropolis, might supply the real motive power that controls the public administration". So the political sovereign is not as precise, exact and determinate as the legal sovereign.

But this criticism misses the real point. The theory of political sovereignty does not aim at the refutation or rejection of legal sovereignty. On the contrary, it accepts the existence of the legal sovereignty. What it rejects is its omnipotence and omni-competence. For law and law-courts, the legal sovereign is the final, omnipotent and determinate power or source of law. But, for political life and political obligation the theory of legal sovereignty does not fully and satisfactorily explain the nature and location of sovereignty. It does not explain the true reason why the citizens should obey the law. The theory of political sovereignty corrects these shortcomings and gives us the basis of political obligation and explains the real nature of modern democracy. Political power and obligation must be grounded on the consent and will of individual voter. As McKenzie says, "The will of the legal sovereign is or should be the authorized embodiment or manifestation of the will of the political sovereign. If the popular will is accurately expressed by the legal sovereign, the power of the people is effective, otherwise it is not". In other words, the legal sovereign, the parliament, is omnipotent only so long as it expresses 'the will of the people, their hopes and desires, needs and wishes. Should it disregard them, it would be repudiated by the voters. "Parliament itself would be purged of its offending members. Parliament is master, can utter valid commands, only so far as it interprets, or at least does not cross the wishes of the people".

3. POPULAR SOVEREIGNTY

Its origin.

No political concept has played a greater role in human history than that of popular sovereignty. During the last few centuries it has agitated human hearts, organized peoples into powerful revolutionary forces and toppled over several thrones of ancient monarchies e.g. of France, Russia. It has been propounded by some of the greatest political philosophers, like Locke and Rousseau. Yet it has been questioned, doubted and even indignantly rejected by several others. As compared to its role in political thought and history, the theory of legal sovereignty seems to be mere hair-splitting verbiage of the lawyers and jurists, and the theory of political sovereignty as a distorted Statement of facts by honest and laborious professors of Political Science and publicists. The idea of popular sovereignty was first presented in the 16th and 17th centuries. But the high priest of the popular sovereignty was the Frenchman, J.J.Rousseau, who transformed it into a revolutionary dogma, and proclaimed the sovereignty of the people in the form of the General Will. It led straight to the great French Revolution of 1789. The growth of democracy, individual liberty, spread of education and political awakening have increased the influence and importance of the idea of popular sovereignty. It has now become, as Bryce says, "the basis and watchword of democracy".[39]

Its meaning.

In spite of an unflinching faith in it, popular sovereignty is not an easy term to define. It is at once a very simple and a very complex concept. In simple terms, it means that supreme power ultimately lies with the people, that government should be based on the consent of the governed. It means, as Gilchrist says, the power of the masses, as distinguished from the power of the individual ruler or of the ruling classes. The difficulty arises when we try to see how and when the people exercise this supreme and ultimate power attributed to them. Various theories are suggested to show how the will of the people directs the will of the government in an actual State. One of them is that of Professor Ritchie.

Ritchie's Theory.

He says that the people exercise sovereignty directly through electoral power, and indirectly through influence, intimidation or potential threat of revolution or rebellion. The ultimate repository of political power is the mass of the people. They are ultimately the masters. Hence every kind of rule exists by virtue of their tacit consent. "Sovereignty, in last resort, is a

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[39] Bryce, *Modern Democracies*, Vol.1, p.143.

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matter of force and depends upon the ability to secure or to compel obedience; the power that in case of a struggle would have the strength to command obedience is the sovereign." And that sovereign is the people. Thus Ritchie bases the sovereignty of the people on their tacit consent and not on contract, as Rousseau did more than a century and half before him. The merit of Ritchie's theory lies in the fact that he did not assert that the people ought to be sovereign in the last resort, as others say, but that they are sovereign all the time. Yet he fails to explain the nature of consent and the organisation of the people's sovereignty, as we shall see presently.

Criticism.

The theory of popular sovereignty has been subjected to criticism on many grounds. They are as follows:

(1) ***Vagueness of the Theory.***

The theory of popular sovereignty is vague, and even confusing, because the popular sovereignty is itself of a very loose and inexact form. It has the same vagueness about it as the ancient saying, *vox populi, vox Dei* - the voice of the people is the voice of God. It does not explain the question, "who are the people?

(2) ***The indeterminate character of the 'people'.***

When asked "who are the people, the advocates of the popular sovereignty are unable to answer in clear-cut terms. If we mean by people the entire unorganised mass of people living in a State, then, we necessarily include in it the children, the idiots, the insolvents and all sorts of criminals and law-breakers, who cannot obviously be included among the sovereign people. In those countries where the women are not given the right to vote, they also cannot be included among the "sovereign people". That will create a new difficulty, because nearly one-half of the people are not included in the sovereign. So the more we try to analyze the meanings of the "sovereign" people, the less we know about it.

(3) ***The inherent impossibility of organizing the sovereignty' of the people.***

It is easy to say that the people are sovereign, but it is difficult to tell how. Organization is the virtue of sovereignty. Sovereignty is the power to command obedience; but it must be an organised power before it is obeyed. When a people become organised they are necessarily led by some leaders and parties. But then they are no longer sovereign, for he who organises the people becomes the sovereign, which means the legal sovereign. Here we find a contradiction in terms. If popular sovereignty means the power of the unorganised mass of the people, there is no State and therefore no sovereignty. But if they become organised, they become legal sovereign. It is said that it can be expressed by public opinion. But unorganised public opinion, however powerful, is not an expression of sovereignty. When it becomes organised, it does not remain the opinion of all the people; because it is necessarily the opinion of the majority of the people. Understood in any of these senses, popular sovereignty is an illogical and contradictory concept: either it is not sovereign, or it is not popular.

(4) It is also suggested that the sovereignty of the people is expressed by the electorate, i.e., by the right to vote. But the right to vote is a legal right which is given not to all persons but to those who are qualified to exercise it. Actually it is often found that only 30% of the entire population of a country really exercise the right to vote. As elections are decided by majority votes, the majority of the electorate will constitute barely 15% of the whole people, which is, indeed, a very small minority of the people Hence the sovereignty of the people, as expressed by the electorate will be a sovereignty of a small and indeterminate minority of the whole population. So, adult suffrage is not a good criterion of popular sovereignty.

(5) Moreover, it is said by Ritchie that the people are sovereign because they are always more numerous than any government which might oppose them. Therefore, their physical superiority and force will always decide every political issue and limit the actions of the government. But millions of unorganised men without discipline, weapons and modern equipment, can be easily overawed by a few thousands of well-organised soldiers. Sovereignty, is this case, does not lie with the people but with a handful of men who have organised the army and the police.

We conclude, therefore, that either popular sovereignty is no sovereignty at all, or it is another name for political sovereignty. If the people are not organised, they are not sovereign; but if they are organised, they become political sovereign, who act through the legal and constitutional channels of elections and franchise. In any case, the notion of popular sovereignty is the vanishing point of sovereignty. "The will of the people", says MacIver, "is rarely, if ever, the will of all the people".

Importance and merits of the theory

It cannot be denied that the concept of popular sovereignty "contains great truth and is the basis of democratic faith. It emphasizes that the people are the sovereign power though they don't exercise it". It stresses the importance of public opinion in modern democracy. It is a useful concept, provided we keep in mind the distinction between the legal power and moral influence because, in the last analysis, popular sovereignty signifies the moral control and influence over the legislature or the legal sovereign. As Garner says, it is nothing more than the power of the majority of the electorate in a country where a system of universal suffrage prevails, acting through legally established channels, to express their will and to make it prevail. As Laski puts it, "All, in fact, that the theory of the popular sovereignty seems to mean is that the interests which prevail must be the interests of the mass of men rather than of any special portion of community" Lastly, this theory rightly emphasizes the role of force of numbers in the State. Indeed force is an element of sovereignty, but the test of Statesmanship lies in the fact how and when this force is to be exercised: "the highest ideal of Statesmanship is to render the actual exercise of such force as seldom necessary as possible, and the extent to which this aim is attained will depend largely upon the degree in which the State action corresponds with the desire of Public Opinion or the General Will". The theory of popular sovereignty is both a guide to Statesmanship and a chart of the political health of a State. Lastly, the theory of popular sovereignty emphasizes a basic truth that government should be both constitutional and popular, that is, it must be so organised that public opinion is able to express itself in a legal way as readily as possible and that this opinion is expressed by as large a part of the people as possible. This is done by such means as a written constitution, fundamental rights, universal suffrage, representative legislature, frequent elections, local self-government and responsibility of the government to the people, and the direct legislation by the people in regard to certain important legislation by means of referendum and initiative. So, as Gilchrist says, the idea of popular sovereignty can be better expressed by the term "popular control" of the government. But it is more of a moral influence than a legal power.

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Chapter 18

Law, its Kinds: Morality

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What is Law?

The term 'Law' is used in different senses in various sciences. Basically, it means the uniformity or fixedness of action and behaviour of a thing or phenomenon. The word 'law' denotes this sense etymologically also. It is derived from the old Germanic word *"Lag"* which means something fixed or unchanging. But this term came to be differently understood in the two great divisions of the sciences, physical and social. In physical sciences, law denotes the principle of *uniformity* in the behaviour or movement of the things or in the occurrence of the phenomena of nature. It is in this sense that it is used in such phrases as the law of gravity, the laws of motion in Physics or the various laws in Chemistry.

In the social sciences, law is used in two different senses. Firstly, it is used in the same sense as in physical science, i.e., as a uniformity of occurrences or behaviour in social processes, e.g., the laws of demand and supply as in Economics. Secondly, it is used in a different sense, as explained here Man's behaviour is motivated by will, desire or, even by caprice and whim. But society cannot exist without some uniformity of behaviour and conduct. Hence it becomes necessary that human actions and movements should be regulated by a body of rules to guide them uniformly. This could be done by the conscience or moral sense of the individual or by customs and public opinion, guiding him to do what is good. But moral sense or conscience may be too weak to enjoin or prohibit one's actions and social opinion may be silenced by the wealth, social position or some other advantage which enable some persons to refuse to respect the custom or the moral rule. For this reason, society has created the State to see that certain socially necessary actions or prohibitions must be performed by all its members. The State enforces them by its coercive power. The rules, which define these socially necessary actions or prohibitions, are called laws of the State. They are political laws, to distinguish them from the social customs, moral laws and rules, and the physical laws of the exact sciences. In Political Science, Jurisprudence and other sciences we are concerned only with the political laws, or the *positive laws,* also called *laws as such.* The purpose of these laws is obvious. They embody the will of the State. They create the conditions of liberty for the individual. They create unity and organisation in the society. The State exists mainly to declare or frame these

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laws, and to enforce them, by its coercive power of punishing those who do not obey them.

Definitions of law.

Here are some definitions of law given by eminent writers. Aristotle defined law as "whatsoever the ruling party of the State shall enact" Austin defines law as thus: "Positive laws consist of commands set as rules of conduct by a sovereign to the member or members of the independent political society wherein the author of law is supreme' Or. briefly, "Law is a command issued by a superior to an inferior". T.H. Green defines law as "the system of rights and obligations which the State enforces" President Wood row Wilson gives a more comprehensive definition in these words: "Law is that portion of established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government.". **Holland,** an English jurist, says, "Law is a general rule of action, taking cognizance only of external acts, enforced by a determinate authority, which authority is human, and among human authorities is that which is paramount in a political society", or, briefly, "Law is a general rule of external action enforced by a sovereign political authority" **J.C. Carter** in his book: *Law, Its Origin, Growth and Function,* says: "Law always has been, still is, and will for ever continue to be the custom". **Salmond,** another jurist, says: Law is "the body of principles recognised and applied by the State in the administration of justice.

We may define law simply thus: Law is a general rule of human conduct, taking cognizance only of external acts, recognised or framed by the State and enforced by its coercive authority.

Analysis of Law.

knowledge or awarness.

If we analyze the nature of the positive law, we find that it consists of six characteristics: viz., uniformity, universality, externalness, content, formulation and enforcement or sanction.

Uniformity. Law is a general or uniform rule of human conduct. It requires that an individual will always do or refrain from doing something. It means that whatever the circumstances or situation, the individual will always perform a particular act as defined by the law or refrain from doing it as prohibited by it. Thus, law is, first of all, a Statement of *"Do's"* or *"Do'nts"*.

Universality. Law is applied to the whole civic community. It is meant for all individuals who live in the State. Law is universal, because no persons or group of persons can claim exemption from its obedience. Law knows no exception. It covers all persons and associations equally. This is one of the important principles of law, known as *the principle of equality before law.*

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Externality. Positive law or the law of the State deals only with the external acts and not with inner thoughts or intentions of an individual, as the moral rules do. It is because the State is unable to go into the motives and intentions of the individuals. It cannot enforce thoughts. It cannot compel the people to think honestly or truthfully. The courts also cannot take notice of the motives or intentions of the persons, because as the medieval lawyers said, devil himself does not know what is in their minds. These are the reasons why law takes cognizance only of external acts.

The action of taking judicial notes.

Content. Most of the laws are the Statements of rights and duties. This is their real purpose and content. They define the necessary relations between two or more individuals or groups of individuals or between the individuals and State or public body. These relations impose a duty or an obligation on some other individual or individuals, on one side, and confer a right on some individual or individuals, on the other. There are, however, certain laws which do not describe rights and duties. They may better be called acts rather than laws. For instance, a law to build a particular hydel dam, say Tarbela Dam, is not a law, but an act of the State. Similarly, a law to set up a particular department, e.g., a university or a military unit, is not a law in the real sense, but an act of the State. Such laws do not grant rights to any person and strictly speaking are not laws.

Formulation. The law must be recognised as such when framed by the State, that is, by its legislative organ. Unless a custom or a moral rule or any social relation and interest is not formulated or legislated upon by the State, it will not become a law, nor will it be enforced by the courts. A mere custom is not binding on the citizens.

Sanction. Law is enforced by the State, if need be, by its coercive power or by its power to reward. It punishes those who violate it by fine, confiscation of property, imprisonment and, in the last resort, by execution or exile. This force or threat of punishment or giving of reward by the State is called its sanction. Other kinds of laws, such as moral rules and social conventions and customs, are not supported or sanctioned by the coercive authority of the State. Thus alone life in a society can be made comfortable and predictable for the well-being and happiness of its people.

Three Schools of Jurisprudence.

Since the days of John Austin a controversy is waged on two questions concerning law, viz., the nature of law and its source. Generally speaking, there are three views regarding the nature and origin of law. First, there are the views of the analytical school, which emphasize authority and compulsion of the formal rules of society. Second, there are those of the historical school, which emphasizes the development of habit and custom. Third, there are those of the sociological school which emphasizes the needs and conditions of the society and its individuals, which needs be protected by its necessary rules. We shall now describe each school here.

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Analytical or Positivist School.

It owes its origin to John Austin who was its leading exponent in the nineteenth century. It is also called *the 'positive' school,* because it considers law as it is and not as it ought to be. As it was the first modern school of law, it is also called the classical, orthodox, or conventional school. The analytical or positivist theory of law is based on two principles, Firstly, as regards the source, *law is the command of the* sovereign, "the determinate human superior" as Austin said. In other words, law is made only by the sovereign authority of the State. Legislation is its only source. Secondly, force is the essence of law. What cannot or is not enforced or sanctioned by the coercive power of the State is not law. Law compels obedience: if it cannot, it is no law. As Holland puts it, "the most obvious characteristic of law is that it is coercive."

This theory of law was vehemently attacked by Maine and other historical jurists in the 19th century and is today severely criticised by the political pluralists and the sociological jurists. It is declared to be too rigid, abstract and unprogressive. It does not take into view the historical conditions in the growth of law and the social needs and interests. In spite of these shortcomings, the jurists of the Analytical School have contributed much to the theory of Law and Political Science. First of all, they have laid emphasis on clear definitions and logical distinctions. In this way, the analytical method has removed uncertain and ambiguous elements from the conception of law. It can no longer be confused with the "law of nature" or the law of God, as it was done before the 19th century. Secondly, this school has given us the juristic or legal theory of sovereignty. Lastly, as the analytical theory has been closely associated with the utilitarian theory, it has upheld the principle of *the greatest good of the greatest number* in legislation. Thus this school has advocated that Laws must be made by the State in the interest of general welfare. This school derives its political philosophy from Bodin, Hobbes and Bentham.

Historical School. It propounds a historical theory of law. It rejects the contention that the command of the sovereign and the coercive force of the State are necessary characteristics of law. Instead of being a deliberate enactment by the sovereign, it believes that law is a result of a long historical growth in the society, because it evolves from social customs, conventions, religious precepts and principles and economic needs and relations of the people. In other words, this school looks behind the sovereign into the history of the people or society in order to discover the real sources of law. It regards legislation as a formal source, and the customs, traditions and popular consent, as the material sources of law. It studies the origin and growth of laws. It views the law as the product of the forces and influences of the past. Law is not 'made' by the sovereign but is 'suggested' to him, as Woodrow Wilson says, "by the circumstances and opinions of the nation for whom he acts". The State does not create law it but merely formulates and enforces it.

The chief exponents of this historical theory were Savigny in Germany, and Maine, Maitland and Pollock in England. This school has one defect. It is conservative in its attitude and looks too much to the past. It emphasizes legal history, but not legal philosophy. It has one merit. It shows that law has its roots deep in the history and will of the people, without which it will not be really obeyed, no matter how powerful the law-making authority may be. It shows that law is first a custom and then a code. Thus it corrected the narrow, formal and rigid view of the Analytical School.

Sociological School. Iris a modern school of Jurisprudence, and is influenced by modern psychology and sociology. But the jurists of this school do not hold common principles and views. The chief exponents of this school were Duguit, Krabbe and Laski. All of them severely criticised the analytical theory of law. They find the source and sanction of law in social need and necessity. According to Duguit, man lives in a society in which his needs and interests can be realised. Society has unity or solidarity based on the social rules by which alone social needs and interests can be realised. Every individual observes these social rules because both self-interest and experience tell him that by doing so he can satisfy his needs and interests and live happily. The knowledge or awareness of the social needs and rules is the real source and sanction of laws. The State does not create them but merely formulates them, so that social solidarity may be preserved and social purposes of the individuals may be realised. *The social rules one the laws.* They come from the society and not from the State. The sanction of the law is not the force of the State, but the psychological awareness of the individual that his obedience of the law will meet with social approval and his disobedience with the disapproval of his society. Laws, as Duguit defines, are, in the fundamental sense, the rules of conduct which normal men know they must observe in order to preserve and promote the benefits derived from life and society. "They are the necessary relations of social living". According to Krabbe, another sociological jurist, the source and sanction of laws lie in man's sense of right, in his value judgement of what is right and wrong, just and unjust. He defines law as "the expression of one of the many judgements of value which we human beings make, by virtue of our disposition and nature". We obey law, not because we are afraid of the punishment or power of the State, but because it is just and good. Law is above the State. Krabbe upholds, as he puts it, the sovereignty of law and rejects the sovereignty of the State. According to Laski, the source of law is in the consenting mind of the individual. We obey it because it enables us to satisfy our desire, and not because of the policeman, i.e., the State.

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Chapter 20

Liberty and Equality

Liberty of the individual and Sovereignty of the State are two poles of Political Science and Philosophy, around which most of their problems revolve. One of these problems is: How to organise the State so that its sovereignty is preserved without destroying the liberty of the individual. This problem leads us to a still greater problem, that of the relation between the State and the individual. Broadly speaking, these problems are solved in two ways, either by regarding the State as the end and the individual as a means to this end, or by regarding the individual's life, liberty and happiness as the end and the State as a means to them. The former view is that of Idealism and of such modern theories as Socialism and Fascism, while the latter is that of Individualism. In order to understand these problems and theories, we must know what is liberty, its various kinds and its relations to sovereignty, law and authority of the State.

What is Liberty: Its negative meanings.

The term "liberty" is derived from the Latin word 'liber' which means free or unrestrained. Montesquieu once remarked: "There is no word that admits of more various significations, and has made more different impressions on the human mind than that of liberty". In its absolute sense liberty may be defined as "the faculty of willing and the power of doing what has been willed, without influence from any other source, or from without." Or, briefly, "liberty is absence of restraint." Understood in this sense, it means the freedom of one man alone and the consequent restraint on others. Obviously, such an absolute liberty is not desirable at all. If one individual has unlimited freedom to do whatever he likes, all other individuals should also have the same unlimited and absolute liberty. But this is impossible in a society where one's action affects others and may injure their interests. So if there is no check on the liberty of an individual, he may do many things which may completely destroy the liberty of others. Moreover, if society is to exist and progress, there are certain things which no individual can be allowed to do at all, such as murder, theft etc. From this it follows that we cannot live without common rules which restrain the absolute liberty of all of us. Liberty has, therefore, to be defined on two bases: the desire of every man to have his own way and the social need to protect the equal freedom of others and their interests. Hence, the problem of liberty is not one of absolute freedom but one of relation between the

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individual desire for self-expression and the need to control individual action by certain common and necessary social rules and obligations. As Laski puts it, "Historical experience has solved for us rules of convenience which promote right living and to compel obedience to them is a justifiable limitation of freedom. Understood thus, liberty is the power to do anything provided it does not injure the freedom of others. That was how Herbert Spencer, an individualist thinker of the 19th century, defined liberty: "Every man is free to do what he wills, provided he infringes not the equal freedom of any other man". This is, however, the meaning of liberty in its negative aspect.

Its positive meanings:

In its positive sense, liberty is not only the absence of restraint but also the presence of opportunity to do or achieve something. It is, as Laski says, "the eager maintenance of that atmosphere in which men have the opportunity to be their best selves". It means the power to develop one's abilities and to plan one's life according to one's own will. In this sense liberty is a product of rights. It may be remarked that the negative aspect of liberty implies duties; the duties imposed on others not to interfere in my freedom and the duty imposed on me not to interfere in the equal freedom of others. In its positive sense, liberty implies rights or opportunities which are essential for the development of the ability, personality, interests and ideals of an individual. Liberty must therefore, be defined both as the absence of restraint and the presence of opportunity. Ordinarily, liberty is understood by a rich man in its negative sense, as absence of regulation by the State, and by a poor man in the positive sense, as the provision of opportunity to live a good life.

KINDS OF LIBERTY

There are various kinds of liberty:

Natural Liberty:

The concept of natural liberty has played a very great role in the history of political thought; yet it is a vague and misleading term. It is vague because it can be understood in several senses. It means, firstly, the absolute and unlimited power to do whatever one likes. Obviously, in this sense, liberty is really a licence to do unlimited harm to others. Such a liberty cannot be possible in society and State. Secondly, as Rousseau said, natural liberty means the freedom man enjoyed in the State of nature before the State came into being. It is the unlimited liberty of the natural man, moved as he was by his impulses and instincts. Unlimited freedom, as natural liberty means, is impossible and even dangerous, for it will cause licence and anarchy which are hardly desirable for social security and progress. Liberty is possible only in society and State. Law is the condition of liberty. *In the State of nature, there was no liberty: natural liberty was natural*

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power and right was might. Historically, natural liberty was closely linked with the concepts of the law of Nature described above, and Natural Rights, to be dealt with later.

Civil Liberty:

The concept of civil liberty is opposed to that of natural liberty, because it is liberty in the society, guaranteed by the State. It is defined as the sum-total of the rights given by law and protected by the coercive authority of the State. It consists of the rights and privileges which are guaranteed equally to all individuals by the State, either individually or in association, to choose and pursue objects which they deem good. Unlike natural liberty, it is not absolute or unlimited, because it is necessarily limited by the equal rights and liberty of others. It is both negative and positive in character. In the negative sense, it means, exemption from the interference by the government, and in its positive sense, it means the particular rights of the individuals who can call upon the government to protect them against all other individuals and associations. These two aspects of civil liberty provide us with two forms of liberty: individual and constitutional. Individual liberty is protected by private law and the constitutional liberty by public law.

It is also called personal liberty. It is the essence of liberty. It is a product of the State. When there was no State, there was no individual liberty. When it came into being, it created and maintained the liberty of the individual. At first, it was not well defined and properly guaranteed, because the authority of the State and its law were-also not thoroughly organised. But, in course of human history, as the State became better organised and its authority and laws more definite and effective, the right of man, which it guaranteed, also became more definite. Individual liberty is defined as the secure enjoyment by the individuals or associations of individuals, of the power to think their own thoughts and to express and act upon them in their own way under the shelter of law, provided they do not injure or destroy the corresponding rights of others.

J.S. Mill rightly-remarked' that an individual should have as much of liberty as does not injure the liberty of others. Bertrand Russell regards personal liberty as the greatest of all political goods. Rousseau declared that "to renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties." Individual liberty consists of rights, which are essential to the development of individual personality. These rights are guaranteed by law which assure the citizens, firstly, that they are protected against their infringement by other individuals, and, secondly, that the government will not interfere in their enjoyment arbitrarily. They are, to mention a few, the right to life and person, the right of property, freedom of expression of opinions, right to free speech, freedom of association, belief and worship, etc. We shall describe these particular rights in detail later on.

CONSTITUTIONAL LIBERTY.

It is another aspect of civil liberty. "Liberty of individual" says Laski" is never real unless the government can be called to account, and it should always be called to account when it invades rights." Constitutional liberty consists of rights available against the government, as guaranteed by the constitution of laws or the State. However, this immunity of the individual liberty from government interference is a recent development. For centuries past, did not distinguish between the State and government. They claimed rights against the State. There can, however, be no rights against the State, but only against the government which is its administrative machinery. These rights are defined and guaranteed by the constitution or the fundamental law of the State, embodied in the public law. The constitution or the fundamental laws embody the principles, which define and regulate the conduct of the government, set a limit to its action as against the individual and grant him certain privileges and immunities with which the government may not interfere. The rights of the individuals and associations against the arbitrary interference by the government are safeguarded by different methods in various States. Generally speaking, they are:

(i) a written constitution, as in Pakistan, India, U.SA. which clearly defines and limits the powers and functions of the various departments of the government,(ii) The rule of law which proclaims the supremacy of law and equality of all citizens before it, whether they are ministers or private citizens, officials of the State or not. The Rule of law obtains in England, Pakistan and other British Dominions., (iii) a bill of rights or a declaration of Fundamental Rights, which are incorporated and guaranteed by the constitution, and cannot be infringed upon or denied by the government and (iv) the separation and independence of the judiciary from the executive.

Relation of Civil Liberty to Authority or Sovereignty.

Political life is, in fact, a perpetual tug-of-war between two conflicting forces, the desire of the government for more authority and the desire of the governed for more liberty. Liberty is sometimes believed to be opposed to law and authority of the State: the more of one means the less of the other. But law is the condition of liberty and authority its primary safeguard. Thus conceived, liberty is not consistent with (the exercise of coercive power of the State. On the contrary, since the freedom from interference can only be enjoyed by the forcible prevention of interference, liberty is seen to be dependent upon the existence of authority. The coercive power' of the 'State hinders the hindrances to the liberty of the individual. Thus the apparently contradictory ideas of sovereignty and liberty are found, on closer examination, to be correlative terms. However, the State which best guarantees and maintains liberty is a constitutional, responsible, and democratic State, and the methods by which it does so are that written

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constitution, the Rule of Law, the declaration of Fundamental Rights, etc. We may, therefore, conclude in the words of Leacock that the existence of liberty is not logically incompatible with the existence of the State, and can hardly be thought of as existing apart from it."

ECONOMIC LIBERTY.

Economic liberty means both the freedom of earning a decent and sufficient economic income and also the freedom from fear of unemployment or loss of economic income. It implies, as Tawny says, the absence of such economic inequalities which can be used as means of economic constraint. Laski has defined it thus: "By economic liberty I mean security and the opportunity to find reasonable significance in the earning of one's daily bread." Really economic liberty exists only when there is *"sufficiency for all before there is superfluity for a few."* It presupposes, therefore, a society in which there is no class domination and in which economic democracy prevails. Economic democracy means two things: firstly, the possession of economic rights by all citizens, namely, the right to work, right to reasonable hours of work, the right to minimum wage, the right to relief during periods of unemployment, sickness etc., the right to form trade unions, and the right to leisure, and secondly, the share of the workers in industrial organisation.

Its relation to other liberties.

Economic Liberty is the precondition of other liberties; none of them can really exist without it. An individual cannot be really free if hunger, starvation and destitution stare him in the face at every step. Nor can there be any liberty when there is a constant fear of unemployment and "insufficiency which, perhaps more than any other inadequacies, sap the whole strength of personality." Lenin has rightly declared that political or civil liberty is meaningless without economic liberty. The same is true of a nation. It cannot remain free and independent without being economically free and strong. A poor man has no freedom; he lives at the behest of other men, his employers. A poor nation has no independence; it exists at the mercy of its strong neighbours or at the charity of its foreign paymasters. In short, unless and until economic liberty prevails, civil, political and national liberties become illusory.

MORAL LIBERTY

It means the freedom of the individual to act according to his own conscience. Moral liberty is necessary for the growth of his or her character and personality. It does not exist when human mind or thought is controlled and regimented by religion, customs, tradition or political power or law. One of the great defects of Idealist philosophy of the State was that it declared the will of the State to be the real will of the individual and thus justified unconditional obedience to the State. But such an obedience will destroy the moral liberty of the individual. The real will is not the will of the State but the will of the individual himself which may or may not be embodied in the will of the State. Moral liberty consists in the right to freedom of belief and opinion.

POLITICAL LIBERTY

Political liberty implies the power of the people to determine as to how they are to be governed. Laski puts it thus: "Political liberty means the power to be active in the affairs of State". It means that each individual has the opportunity to contribute his opinion and his experience to the sum-total of public opinion and experience which go to determine the decisions and policy of the government and the laws of the State. Leacock calls it "constitutional liberty" and defines it as the power of the people to choose their government which is responsible to them. Gettell regards political liberty in modern times as synonymous with democracy or popular government, because in such a government the people themselves determine how they shall be governed. Democracy, as Gilchrist says, is based on the principle that each citizen is able to express his opinion on the affairs of government which concern him or his country. So political liberty implies both the freedom to express one's opinion in the affairs of the State as well as a share in its authority. In other words, political liberty aims at placing both liberty and sovereignty in the same hands. It consists in such rights as the rights to vote, the right to be elected, the right to hold a public office, if adequately qualified for it, the right to criticise the government, the right to be informed of the affairs of the State, etc.

Its relation with other liberties.

The struggle for political liberty has a long history behind it. At first, the people struggled for the recognition of their civil liberty or civil rights. But once civil rights were acquired by them, they found that they could not enjoy and secure them properly without participating in the political affairs and exercising political power. The reason is, as Laski points out, that those who are excluded from a share in political power tend to be excluded from its benefits as well. This led to a demand for political rights. The growth of political liberty shows that it exists only in democratically governed countries, and that it is closely linked with civil liberty. Political liberty is a necessary complement to civil liberty. Without political liberty, civil liberty is incomplete, and may even become meaningless and illusory. But political liberty cannot be preserved, as Laski says, without two essential conditions: viz., universal education and free press. The doors of education should be open to the children of all citizens, regardless of their income, wealth, social status, sex, religion, and other distinctions. Moreover, an educational system must not be based on different schools and education for the children of the rich and the poor.

Such discrimination produces the same kind of society that existed in the Middle Ages with its division into two classes of nobles and serfs, or in the ancient times with its division into free citizens and slaves. The children of the rich will be trained in the habits of government and political monopoly, while those of the poor in the habits of subservience and passive obedience. In short, such an educational system will not produce a free people. The second condition of political liberty is the provision of an honest, truthful and adequate supply of news and general information. It means a free press. If democracy means a government guided by public opinion, the opinion of the people must be enlightened opinion, based on truthful information and reliable news. The press disseminates information and knowledge which is honest, straightforward and unbiased. But this is often not so. It sometimes skilfully omits relevant facts and deliberately distorts other. If so, public opinion will be unrelated to truth and will be corrupted at its very source, "for to exercise one's judgement in a miasma of distortion is, ultimately, to go disastrously astray."

NATIONAL LIBERTY.

It implies the freedom and independence of a nation. It is freedom from foreign control. It means a free people in a free country. Really national liberty implies external sovereignty. Moreover, without national liberty a people cannot enjoy or possess other kinds of liberties. National liberty is, thus, the foundation of civil, economic and political liberty. For example, the people of Indo-Pakistan did not enjoy liberty when they were under the rule of the British Imperialists. Or take a recent example. Today the Kashmiri people in Occupied Jammu and Kashmir enjoy no liberty, because they are denied the right of self-determination by the Indian occupiers. National liberty consists of such rights as the right of self-determination, the right of self-government, the right to be ruled by national government.

Three Aspects of Liberty.

Liberty as such manifests itself in one or more of its three aspects: liberty of thought, liberty of speech and liberty of action. Every individual or group of individuals seeks liberty either to think, say or do something. There is no liberty if he or she is prevented from thinking or saying or doing something, as he or she likes, by the force of the State or law, or by the opinion of the majority, social customs or religious conventions, etc. of the three aspects, liberty of speech, including, liberty of reading, writing and discussion, is the most essential factor because the liberty of the thought and action would automatically-follow from it. When the people are free to say anything they like, they criticise each other's opinions. From discussion and criticism arises truth, as it is sifted out by conflicting opinions and views. Thus liberty of speech becomes a free enquiry into truth. Finally, when the

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Chapter 23

Classification of States or Governments

Political writers' have always tried to classify States or governments into different kinds on the basis of the forms of their governments, nature of sovereignty or the philosophy or ideology of the States. We shall begin with the classification of States by the ancient Greek philosopher, Aristotle, because he made the first systematic attempt to do so.

Classification by Aristotle.

The starting-point of all attempts to classify the States into different kinds was the famous classification given by Aristotle in his book, *Politics*. But he was not the first to do so. He really followed his teacher, Plato and other Greek writers, like Herodotus. The original thing about Aristotle's classification was that he based it on two principles, namely:

1. The number of persons who exercise supreme power in the State; and
2. The ends for which the supreme power is exercised, which may be either for the good of the ruled or of the rulers.

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The First Principle.

According to the first principle, there may be in a State either one ruler, or few or many. If there is one ruler, the State is a monarchy, if few rulers, it is an aristocracy, and if many, it is a 'polity'. Hence, basically, there are three kinds of States.

The Second Principle:

Aristotle further distinguished the three basic forms of States on the principle whether the sovereign power is exercised for the good of the ruled or of the rulers. According to Aristotle, a State is an association which exists for the good of its members. If its power is exercised for the good of the people, the ruled, the State is of a normal or good form. But if it is exercised for the benefit of the rulers, it is then a bad or perverted State, for it does not fulfil its real end. So, when monarchy becomes perverted, it becomes a tyranny, and when a polity is bad, it is what Aristotle calls a "democracy", which may be translated as a 'mob-rule or 'mobocracy'. The word 'democracy' was used by Aristotle in its original Greek sense as the rule of the 'demos' which, means the 'mob', or rabble. In short, he classified the States into six forms or kinds.[47]

Aristotle's classification of the States or governments may be summarized in tabular form as follows:

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Second Principle \ First Principle	Rule of One	Rule of Few	Rule of Many
Normal or Good	Monarchy	Aristocracy	Policy
Perverted or Bad	Tyranny	Oligarchy	Democracy

Let us now define each of these *six* forms of States. A monarchy is a government by a king who rules for the good of the whole community. A tyranny is a perverted form of monarchy in which the one ruler uses his supreme authority for his own selfish ends or benefit. An aristocracy is the rule of the few good rulers who exercise supreme authority for the well-being of the people. When it becomes perverted, it becomes an oligarchy which is the selfish government of the few rich men in their own interests. A polity is a good form of the rule of the many for the good of all. Aristotle meant by it what we now call a constitutional democracy i.e., a government by the general body of the citizens as regulated by a constitution and laws. Its perverted form becomes what Aristotle calls "democracy" which is a lawless and selfish rule of the 'demos' or the mob. According to him, a 'democracy' is the rule of the poor who are many but lawless, just as an oligarchy is the rule of the few rich, who are selfish.

Aristotelian Cycle of Political Change.

Aristotelian classification is not merely a description of various forms of stales but also an explanation of how one form changes into another. The change continues till the original form re-emerges, thus

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[47] 'It is evident that every form of government must contain a supreme power over the whole state, and this supreme power must necessarily be in the hands of one person, or a few or many. When they apply their powers for the common good, such states are well-governed: but when the interest of the one a few or the many that enjoy this power is the only concern then ill-governed. We usually call a state which is governed by one person for the common good, a monarchy: one that is governed by more than one but by a few only, an aristocracy, either because the government is in the hands of the most worthy citizens or because it is the best form for the state and its inhabitants. When the citizens at large govern for the public good, it is called a polity. Now the corruptions attending each of these governments are these: a kingdom may degenerate into a tyranny, an aristocracy into an oligarchy, and a polity into a democracy Now a tyranny is a monarchy where the good of one man only is the object of government, an oligarchy considers only the rich, and a democracy only the poor but none of them have a common good in view.' *The politics of Aristotle. Book III. Chap. VII. (Everyman's Library)* '.

completing one cycle of change, like the movement of a wheel. This is known as Aristotelian cycle or progression. It occurs in this manner. First of all, there is a monarchy or kingship, the rule of a good king.[48] In course of time, the kings become bad and oppressive tyrants. But the tyranny does not last long, for the people overthrow it under the leadership of a few good men, who establish an aristocracy. When the character and aims of the few rulers degenerate aristocracy becomes oligarchy. This time the citizens establish a constitutional rule of the many, which Aristotle called 'polity'. With the degeneration of the character of the citizens, they become a lawless mob. Thus polity degenerates into 'democracy', the rule of the mob. But this lawlessness and confusion too cannot last long. Sooner or later one strong man, e.g., a successful military leader, assumes supreme power and once again re-establishes monarchy or the rule of one. Thus the cycle of change or progression completed one full cycle and returned to its original form, but only to begin a new cycle of change.

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Historical illustrations.

Aristotle's cycles of change is illustrated by the history of ancient States of his times, especially the Greek city-States. They were originally monarchies, which degenerated into tyrannies. The nobles or landlords overthrew the tyrannical kings and established aristocracies in various Greek city-States. When they degenerated into oligarchies, the citizens overthrew them and established 'polity' or constitutional rule, as illustrated by the city-State of Athens. It degenerated into mob rule which was in its turn overthrown by a warrior-statesman, as was shown by the rise of Philip and Alexander the Great of Macedon. History of Rome also illustrated this cycle. Modern history also illustrates this cycle of political changes to some extent. For example, before the French Revolution, France was ruled by kings whose government became perverted under Louis XV. The Revolution of 1789 overthrew French monarchy and established an aristocracy which lasted only two years and became a 'democratic' State under the Directory. Then came the reign of terror which ended with the rise of Napoleon Bonaparte, a successful military General and Statesman, who established an Imperial Monarchy. At last, the French monarchy was

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[48] **To quote Aristotle: "The first governments were generally monarchies: because it was difficult to find a number of persons eminently virtuous, more particularly as the world was then divided into small communities: besides, kings were appointed in return for the benefits they had conferred on mankind: But such actions are peculiar to good men. When many persons equal in virtue appeared at the time, they brooked not a superiority (of a king), but sought after an equality and established a Free State or polity. The ruling class soon deteriorated and enriched themselves out of the public treasury; riches became the path to honour and so oligarchies naturally grew up. These passed into tyrannies and tyrannies into democracies: for love of gain in the ruling classes was always tending lo diminish their numbers, and so to strengthen then the masses who in the end set upon their masters and established democracies." Politics of Aristotle. Book II. Chap. XV.**

overthrown by the constitutional Republic. But all these examples are mere approximations to the Aristotelian cycle of change. History has nowhere followed the exact pattern of succession or progression, as laid down by Aristotle.

Merits.

Aristotle's classification of States has some merits. In the first place, it is so precise and exact that it has fascinated and attracted the attention of political writers down to the present day. Secondly, he classified the States not only on the basis of their governmental structure but also on that of their ethical or moral spirit. He clearly showed that *a* good or normal State is one which is governed by good rulers. The character of the rulers determines the nature of the State; good rulers make good State and bad rulers, a bad State. Thirdly, he analysed the causes of political change and revolution. His chief aim was to suggest ways and means to prevent endless revolutions which occurred so frequently in the Greek city-States. He found two causes, viz., the deterioration of the character of the rulers and the influence of wealth, i.e., of the economic conditions on political life. He was the first great political writer who showed that politics is conditioned by economics or that wealth influences the political structure of the State to a great extent. He clearly said that oligarchy is a bad government of the rich, while his 'democracy' is a bad government of the poor. Lastly, being an empirical thinker, he illustrated his theory of political change or cyclic progression by the history of his times.

Defects.

In spite of its merits, Aristotelian classification has been subjected to severe criticism. In this connection the following objections have been taken to it:

(i) ***Aristotelian classification is unscientific and merely quantitative.*** It is urged that Aristotle's classification is unscientific and artificial because it is based not on organic and qualitative distinctions between various forms of the State but merely on numerical and quantitative differences. He distinguished them on the basis of the number of rulers, one, few or many. But this is not a qualitative distinction. For instance, the rule of one sovereign may be as democratic as that of the many. This criticism, however, does not hold good. The distinction between monarchy, aristocracy and democracy or polity is really qualitative and organic because it indicates the spread of political consciousness among the people. Like his teacher Plato, Aristotle believed that knowledge is the basis of the State and knowledge means the consciousness of the ethical end for which the State exists. When more people become conscious of this ethical or spiritual end of the good of the State, a new form of State comes into being. Thus regarded, a monarchy is qualitatively different from an

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aristocracy as well as from a polity or democracy as we understand it today. Burgess has rightly said that the distinctive character of a State depends upon the number of persons who are inspired with political consciousness and therefore participate in its organisation and government.

(ii) ***Aristotle's classification confuses the state with government.*** Garner is of the opinion that Aristotle did not keep in mind the difference between the State and government; and, therefore, he did not classify State, but governments. Garner further asserts that even as a classification of governments it is unsound and unscientific because it is not based on their fundamental characteristics. This objection is to some extent correct. But we must keep in mind that the Greeks did not know the difference between the State and the government which is a modern discovery in Political Science. Burgess says that even this shortcoming in Aristotle's classification can be removed if we substitute the terms 'State' and 'sovereignty' by 'government' and 'rule'.

(iii) ***It does not apply to many kinds of modem governments.*** Seeley and Leacock have objected that his classification docs not embrace several kinds of modern States and governments. Seeley says that Aristotle knew only the city-States of his times which were quite unlike the modern 'country-States'. Hence his classification is of little value for modern States. But this objection is not very sound, for the nature of the State is fundamentally the same whether it is a small city-State or a large country-State.

Dr. Leacock raised four objections against his classification. Firstly, it does no provide any place for constitutional or limited monarchies like that of England. Modern English constitution is a 'mixed constitution' which combines the features of a monarchy and a democracy. Outwardly it is a monarchy, but really it is a democracy. Obviously, Aristotle's classification cannot properly classify it. Secondly, 'Aristotle's polity' or what we now call 'democracy' and 'monarchy' open the way to great confusion. Take the case of England and the U.S.A. Both of them are democracies, but they will be put in different categories, for England is a monarchy, while the U.S.A is a republic. Thirdly, this classification fails to take account of the difference between a federal and a unitary form of government. Fourthly, it also fails to distinguish the parliamentary from the presidential form of government. These objections are justifiable to some extent. Aristotle's classification is inadequate for modern States. That is the reason why several modern writers have endeavoured to classify them on other principles, as we shall now describe.

Other Classifications.

Among the modern writer, Montesquieu proposed a three-fold division, viz., republics, monarchies and despotism. In a republic, the people or part of them possess supreme power. In a monarchy, one man rules the State according to the laws of the country. In despotism, the rule of one man is arbitrary and unrestricted by any law. Rousseau also divided the governments into three kinds, viz., monarchies, aristocracies and democracies. He divided the aristocracies further into three forms, natural, elective and hereditary aristocracies. He regarded elective aristocracy as the best form of government. Yet he was a champion of democracy! The German writers are more pedantic in their classification. Bluntschli has classified the States into four kinds; monarchies, aristocracies, democracies and theocracies. A theocracy is a form of government in which sovereignty is attributed "to God or a god or to some superhuman being or to Idea." Another German writer. Von Mohl, gives a long list of States, which he distinguishes as patriarchal, theocratic, despotic, classic, feudal and constitutional States.

Marriot's Classification.

Sir J.A.R. Marriot has provided us with a more adequate classification. He classified States on a three fold basis. First of all he distinguished them on the basis of the distribution of supreme powers in the government. On the principle, there are two kinds of governments, unitary and federal. In a unitary government, all governmental powers are exercised by a single, central government, while in a federal State they are distributed between a federal or central government and the governments of the component units of the federation. Marriot next classifies the States on the basis of the nature of the constitution, which may be either rigid or flexible. A rigid constitution cannot be easily amended, while a flexible one can be. The third basis of classification is the relation between the legislature and the executive. When the legislature is, supreme and the executive is responsible to it, it is a parliamentary form of government. When the two have separate and co-ordinate powers and the executive is not responsible to the legislature, it is a presidential form of government.

Leacock's Classification.

Dr. S. Leacock has given us a more thorough-going and adequate classification than Marriot's. He explained it in a sketch, as given below:

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Chapter 24

Dictatorship and Totalitarianism

Dictatorships: Ancient and Modern.

Democracy today is challenged by a new form of government, called dictatorship. This form of government was known to the ancient Greeks and Romans who called it "tyranny" and "dictatorship", respectively. The Greek tyrant captured political power by force and held it by force. 'But the Roman dictator was appointed to this supreme office under the law and with the consent of the Roman Senate, the supreme authority in the Roman Republic, for the specific purpose of resolving the crisis confronting the State. He held power for a specified period which never exceeded seven years. At the end of this period he rendered account to the Senate and laid down his office. Thus the Roman dictatorship was a temporary legal expedient to overcome an emergency. Modern dictatorship is established by means of a *coup d'etat* or revolution and is a lifelong affair. Hence it resembles more with the ancient Greek *"tyrannous"* rather than with the Roman "dictatorship". As early as 1922, when modern dictatorships had not yet really arisen, Lord Bryce wrote in his *Modem Democracies* that there was a "growing disposition to trust one man, or a few led by one, rather than an elected assembly."

Direct opposite

Dictatorship is defined as the rule of one man who exercises absolute power in the State, sometimes derived from and aided by a political party, or by a clique. It is an antithesis to democracy, because dictatorship is, firstly, government by decree rather than by law; secondly, the dictator is not accountable before any parliament or representative body, and thirdly, there is no limitation on the duration of the dictator's authority. He holds power till he dies or is overthrown.

A small group of people who do not allow other to join them

Rise of Modern Dictatorship.

one man govt

Autocracy is as old as political history. Human history is replete with the stories of autocratic rulers, kings and emperors since very ancient times. Even absolutism is not a new political phenomenon. The Roman Emperors, several modern European kings and rulers like Philip II of Spain, William of Orange, Cromwell, Napoleon, and several Asian kings today, like the Shahinshah of Iran, or the Mikado of Japan, have been and are absolutist rulers. But all of them depend on old customs, laws and traditions of their countries for absolute authority, though none of them tests its exercise by reference to popular vote or plebiscite. Modern dictator captures

Full of

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supreme power against law and constitution and secures popular support by a strong government and plebiscite. Hence this new kind of autocracy is sometimes described as "popular autocracy." A modern dictator is usually a successful military man or a strong party leader.

Modern dictatorships can be classified into three distinct types:

They are communist, nationalist and fascist dictatorships. Many English and American writers and political scientists usually bracket them into a single category for reasons of the propaganda technique of simplification. But there are great differences of structure, doctrine and ideals between each of the three kinds of dictatorships. We shall, however, deal with the organisation of their government and State in this chapter and shall take up their doctrines and philosophies in subsequent chapters. This dictatorship arose during the First World War (1914-18). First of all arose the Communist Dictatorship in Russia in 1917, then in 1921 Kemal Ataturk established a nationalist dictatorship in Turkey. Soon after, in 1922, Benito Mussolini established his Fascist dictatorship in Italy. Then several monarchical, nationalistic and fascist dictatorships were set up in several European countries, like Spain, Portugal, Yugoslavia, Hungary, Rumania, Greece, etc. In 1933, arose the most ferocious of all the fascist dictatorships, the Hitlerite dictatorship of Germany, usually called Nazi Dictatorship. Soon after the Asian brand of Fascist dictatorship was established in Japan. The three Fascist Dictatorships of Italy, Germany and Japan entered into a military alliance for aggression and conquest. They feverishly prepared for a world war which they started in 1939, called the World War II, which ended in 1945 with the utter destruction of the three Fascist powers. Mussolini was hanged by angry Italians; Herr Hitler died in an air-raid shelter in Berlin, but the Japanese war-lords escaped without much thrashing, because they hurriedly and skilfully surrendered to the Americans who nurtured them into their brand of democracy. Fascist dictatorship existed in Franco's Spain, till his death and in Pinochle's Chile till recently. The nationalist dictatorship of Turkey has now become a democracy. Only Communist Dictatorship of Russia still goes strong, rather modified by the perestroika and glasnost policies of President Gorbochev in recent years but mainly because of her progress in industry, science and technology. In post-World War II years we have witnessed the rise of several communist dictatorships, as in China and several East European countries where they have overthrown the former Fascist dictatorships after the defeat and destruction of Nazi Germany, Later on several nationalist dictatorships rose to power, as in 'Egypt, Iraq, Indonesia, South Korea, Thailand and military dictatorships, e.g., in Burma, Pakistan, Bangladesh.

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Main Features of Dictatorship:

As distinguished from democracy or constitutional form of government, dictatorship, both ancient and modern, possesses some characteristic features. They are as follows:

1. *It is a crisis product:* All kinds of dictatorships are products of crisis, whether it is due to constitutional, political, social, economic or religious reasons. Inability of the democracy to function properly and internal weakness are undoubtedly the main causes of the establishment of the modern dictatorial rule. In ancient Rome, one-man despotism was set up to overcome some irresolvable crisis or emergency. But most of the modern dictatorships arise during a national crisis which a strong man, a military leader, or a leader of a political party or clique or group believes he can resolve successfully. Once in power, the dictator continues to stick to power till death or when overthrown-by a new dictator or by the people revolting against him as they did against Ayyub Khan in Pakistan in 1969, or against Marcos in Philippines in 1987 or against Ne-Win in Burma in 1988 or against many communist dictatorships in Eastern Europe during 1989-90. ,

2. **Arbitrary exercise of power:** Dictatorship is characterised by arbitrary exercise of power. Every dictator acquires absolute and exclusive monopoly of power. In some cases, a dictator may share power with other leaders of the party or elite group which has put him into power. But this is often at initial stage. Once firmly in power, he usually gets rid of his collaborator or collaborators in one way or the other.

3. **Aggressive and dynamic methods of decision-making:** Decisions and policies in dictatorship are very aggressively and dynamically implemented. This is, really, one of the reasons why dictatorship is often more successful than democracy; but only for a few years.

4. **Employment of despotic methods of political and social control:** Dictators employ force, terror or intimidation and propaganda to make people obey their decisions, laws and policies. Political parties are banned; newspapers are suppressed; and civil liberties or fundamental rights are done away with.

5. **Abolition of constitutional or legal basis of political power:** By its very nature, dictatorship means a system of government which has acquired power by unconstitutional and illegal methods. The first thing a dictator does is to abolish the constitution or to restrict its application. Sometimes, he issues a new constitution of his own devising so as to legalise his rule. The abolition of the constitutional or legal system is one reason why succession is not easy or peaceful under a dictatorship. What is more, a dictatorship can be put to an end by violence or revolution.

In other words, dictatorship often comes to power through bloodshed and can be got rid of by further bloodshed.

Organisation of Dictatorship or totalitarianism.

The political organisation of a dictatorship is simple, especially of the Fascist dictatorship. The State is ruled by one man usually called the Leader, or by one party which possesses supreme power. No other political party is allowed to exist. The ideal of Nazism and Fascism was "one Reich (i.e. state), one people, one leader." The State controls and regulates everything, and every activity of the citizens. The Fascists worshipped the State. As Mussolini said, "The State is to be all-embracing; outside it no human or spiritual values can exist, much less have any value. Fascism is totalitarian," The Fascist ideal of the State is expressed thus: "Everything for the State; nothing outside it and nothing against it." The individual has no rights, but has many duties. He has to render absolute and unquestioning obedience to the Leader. Mussolini put it thus: the duties of a citizen are "To believe (in the Leader), to obey, to fight." The Nazis twisted the old commandment to "render unto Caesar what is Caesar's and unto God what is God's" as thus, "Render unto Caesar what is Caesar's and render also unto Caesar what belongs to God." In simple words, the Nazi and Fascist Dictators abolished the distinction between religion and politics and brought religion and church under the control of the State. Communist dictatorship is opposed to religion and seeks to abolish it altogether. Nationalist dictatorship usually endeavours to separate religion from politics, as did Kemal Ataturk of Turkey, or later Nasser of the U.A.R. In other words Fascist dictatorship subordinates religion to the State, Communist dictatorship abolishes it altogether, while nationalist dictatorship separates politics from religion.

Defects of Dictatorship.

As a form of government, dictatorship has a number of defects, as follows:

1. *Dictatorship regards the state as the end and the individual as the means.* Dictatorship is totalitarian: it controls everything and regulates every activity of the individual and the society. It is authoritarian, for it provides unlimited and absolute power to the State over the citizens and society. Really, dictatorship makes no distinction between the State and the society. The individual has no life and no rights of his own apart from what the State gives him. It has been rightly remarked that in a totalitarian State there are no individual rights but only State rights. The individual is completely subordinate to the policy and purpose of the State: his right is his duty to obey the State. He lives for the glory and power of the State. In democracy the individual has his rights and freedoms; the State exists as a means to his happiness and self-development. In dictatorship, the individual is a means to the attainment of the ends of the State.

2. ***Dictatorship is based on force and violence and not on discussion and argument.*** In democracy decisions are reached by discussion, argument and persuasion, whereas in dictatorship by force and violence. Dictatorship demands obedience; democracy relies on persuasion and compromise. Democracy presumes differences of opinion among the people, but dictatorship forces conformity and uniformity of opinion among them. Disagreement with the government is regarded as a sin in dictatorship and suppressed without mercy. Democracy accepts opposition to the ruling party and encourages criticism of the government, but dictatorship crushes opposition and forbids criticism of the government because they are believed to destroy the unity of the State and hinder its progress.

lackadaisical — Lack of enthusiasm

3. ***Dictatorship leads to apathy in public life.*** As no opposition and criticism of the government is permitted or tolerated under the dictatorship, the people become indifferent and apathetic to the affairs of the State. In dictatorship the people are asked not to think but to obey the Leader and follow him blindly to wherever he leads them. "Such a policy spells disaster for the future, for to eliminate all differences is to eliminate all that keeps the community mentally and spiritually alive." By regimenting, life and thought the dictator crushes all initiative, intelligence and imagination of his subjects and creates a sheep-like conformity and a deadening uniformity of opinion and prejudice. He destroys the possibility of developing human personality, learning, literature and art. "At best a dictatorship is run as an elaborately organised house of correction, in which the inmate is assigned his task and vigilantly inspected as to the manner in which he discharges it."

~~dis~~ disiccate

4. ***Fascist dictatorship spreads war and aggression.*** While communist and nationalist dictatorships pose to be peaceful, friendly and co-operative in their relations with foreign countries and nations, fascist dictatorship is openly revenge-seeking, aggressive, imperialistic and hostile towards other nations and countries. It is born with a sword in its hand and prepares feverishly for war and conquest, for its eyes are fixed on what the Nazis called the *"lebensraum"*, that is, "living space", consisting of conquered lands and enslaved nations. The fascist dictator hates peace and friendship among nations of the world and ridicules and scorns the ideals of human brotherhood and love. Fascism and Nazism believe in race-superiority and racialism.

5. ***Finally, dictatorship is not a permanent institution.*** Dictatorship lasts so long as the dictator lives or keeps himself in power. Fascist dictatorship not only lives by the sword but perishes by the sword. It is destroyed by the fires of the war it has itself kindled. The history of the nationalist and communist dictatorships is, however, not much different.

Merits or Dictatorship.

1. *It makes government strong.* Dictatorship is claimed as the regime of a "strong man who gets things done.' The reason is that it is a centralized government, in which no opposition parties are allowed and no criticism is permitted. All energies of the State are concentrated on the achievement of aims and ideals for which the dictatorship stands. The dictator gives a strong and efficient government to the country he rules. Hence dictatorship possesses vigour and energy.

2. ***It makes for efficient and prompt administration.*** Dictatorship is strong and more efficient and prompt than democracy in handling emergencies. Democracy works by committees, discussions, parliamentary debates, persuasion and compromise. Hence it takes democracy long to decide a question and execute decision. It seems to be particularly slow when an emergency or a crisis demands a quick decision and prompt action. A dictator, on the contrary, needs no committee, no parliament and no opponents to persuade convince or compromise. He, therefore, meets an emergency with a firm and quick decision and prompt execution. His firmness and determination stand in sharp contrast to the weak and vacillating policies of democratic rulers. "An authoritarian regime," writes Dr. Arnold Toynbee "can produce immediate effective results with a smaller staff of efficient and public-spirited men and women than a democratic regime can." The Communist Dictatorship in Soviet Russia has achieved in industry and science in 50 years what took two centuries to democratic England and U.S.A. to achieve. As regards war, Nazi Dictatorship in Germany made the country so strong and powerful in seven years that she was able to fight all other Great Powers for five years. As regards the nationalist dictatorship, Kemal Ataturk saved the Turks from annihilation at the hands of the British, French, and the Greeks, and rehabilitated Turkey as a strong and respected nation once again. The nationalist dictators of Egypt, Iraq, etc., also achieved the same results in their own countries.

In the end, however, dictatorship has more defects and drawbacks than democracy as we have explained in the next chapter.

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Chapter 26

Unitary and Federal States

Noun = place, state

verb: live in a particular place

Modern States are too large to be administered by a ruler or a government, dwelling at the capital. They have to be divided and subdivided into a number of administrative areas, which are variously called provinces, States, cantons, departments, counties, etc., and their subdivisions, called districts, tehsils, etc. Each of these divisions and subdivisions has its own body of administrative officials and departments, called the Provincial and Local Government officers and departments, as distinguished from those of the Central Government at the capital. The relations between the Provincial and Central Governments can be organised in two different ways, which give us two kinds of States, viz., unitary and federal.

UNITARY STATE

What is a unitary State.

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A unitary State is one in which the supreme governmental authority is vested by the constitution in a single central government which rules the whole country. For administrative convenience, the country is divided into various provinces, cantons or departments, with their own local administrative bodies. But these local governments exercise only such governmental powers as are delegated to them by the central government. In other words, the relations between the central government and the local governments in a unitary State are those of subordination and under central administrative control. All powers of the State are concentrated in the central government. The local administrative bodies exercise only delegated authority. The central government also determines when and how much of the authority shall be delegated to the local bodies, and even what shall be their territorial boundaries and departmental structures and functions. Thus, in a unitary State, the local governments have no autonomy. They are mere administrative agents of the central government. As the latter exercise supreme and final powers, the constitution, of a unitary State is not supreme and rigid. England, France, Italy, Iran, etc., are the example of unitary States.

(1) physical good health

(2) energy enthusiasm

Merits.

(1) The great merit of the unitary form of government is its strength and vigour. The central government, with its vast powers and control over local administrations, can deal effectively and vigorously with all questions,

(1) Strength
(2) Save administration
(3) uniformity
(4) Simple not federal
(5) Less expensive

internal and foreign. 2 It checks centrifugal forces and saves administration from disruption. (3) The strength of the centralised unitary State is especially manifested in foreign policy and national defence. (4) Another advantage of this form of government lies in the uniformity of laws, policy and administration throughout the country, because there are no autonomous units in it, as they are in a federal State. Finally, the unitary State is simple in organisation, as there is a single administrative system to execute laws and policy. This saves money. It is, therefore, less expensive form of government than the federal one.

Demerits.

(1) not aware of the local needs and
(2) neglegation of localities

Modern experience has shown that large territorial States, with their great diversity of culture, language and tradition, cannot be effectively and efficiently governed from a single centre. These conditions demand a federal form of government. A centralised, unitary government is inclined to disregard local needs and interests. It is partly because it is situated far away in the capital, but mainly because it has neither knowledge nor contact with local conditions and affairs. Concentration of power tends to make the central government despotic. The subordinate position of the local government deprives them of initiative and time to devote to local affairs without first getting orders or powers from the superior central authority. Hence they usually neglect them. Central authority impairs the vitality of the local governments, and facilitates the development of a centralized bureaucracy. Really, a unitary State suits a small country, while for a large territorial States the federal form of State is more suitable.

FEDERAL STATE: FEDERALISM

Definition.

A federal State is one in which the supreme powers in the State are distributed by the constitution between a central government and the governments of the federating units, making each government supreme within its own sphere of powers. As distinguished from a unitary government, a federation is a dual government, with two sets of governments, each of which exercises supreme and original authority within its sphere of powers as defined by the constitution. According to Hamilton, a federation is an association of States forming a new one." In the opinion of Dicey, it is "a political contrivance intended to reconcile national unity with the maintenance of State rights."

Federal State is distinct from the unitary State. In the unitary State, the governmental powers are concentrated in a single organ of the State, while in the Federal State they are distributed between two sets of governments, federal and constituent governments. The distribution of powers is in such a way that the government of the federating unit exercises supreme and original authority within its own sphere of powers, not derived

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or delegated authority from the central government, as the local government of the unitary State does. These powers are not the grant of the central government, but the gift of the constitution. The government of the federating unit is not subordinate to the central government. Both are supreme within their spheres of powers, as defined and demarcated by the constitution. Neither of them can interfere nor encroach upon the powers of the other. Hence, unlike the local government of the unitary State, the form and functions, the territory and authority of the component units of a federation cannot be increased, decreased or otherwise modified by the central government. If any change is to be made, it can be done only by amending the constitution, and with the consent of the constituent unit or units.

Intrude on one's territory or personal life.

Nature of the Federation.

Federation is a device to harmonise the need for local autonomy with the necessity of preserving the unity of the State. This requires that there should be government for the country as a whole to administer national affairs and other governments to look after the needs and interests of local areas in such a may that both sets of governments are supreme within their own spheres. Hence the most important characteristic of a federation is the formal distribution of sovereign powers between the federal government at the centre and the governments of the federating units. "A federal constitution attempts to reconcile the apparently irreconcilable claims of national sovereignty and State sovereignty." It does not divide sovereignty between the two sets of governments, because to divide sovereignty is to destroy it. It only distributes sovereign powers between them. Sovereignty lies neither in the federal government nor in the federating units, but in the constitution-amending power, as prescribed in the constitution.

A federation is a 'union of governments'. It has the following distinctive features:

1. Federation comprises two sets of governments, federal and federating governments.

2. The supreme powers are divided on the principle that matters of common interest or of national importance are entrusted to the central government, while local matters and interests are entrusted to the unit governments.

Form Future Plan

3. Federation envisages a union rather than unity. It creates a dual government and not a unitary one. The federating units preserve their separate, autonomous and distinct entity and exercise supreme and original authority within their spheres of powers. They are not reduced to nonentity as are the administrative units of a unitary stale. They are no mere agents of the central government, and do not exist on its discretion. They have their

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own separate and autonomous existence, guaranteed by the constitution, on which also depends the existence of the central government.

4. The States which federate into a union lose their former sovereignty because their union creates a new State which now becomes sovereign.

5. A federation" is made: it does not grow.

6. It has a written constitution so as to prevent any doubt or dispute about the distribution of powers between the federal and federating governments. Neither the federal nor the unit government can amend the constitution with a view to redistributing the supreme powers.

7. The constitution clearly prescribes the process of amending it. The constitution is supreme. Sovereignty lies with the body or bodies which have the power to amend the constitution.

8. Federation is a permanent union. This feature distinguishes it (i) from a confederation which is a loose and limited union of State and (ii) from alliances of sovereign State, such as N.A.T.O. or the U.N.O.

Origin of Federal States. There is no uniformity in the way in which the federal States are created. It depends on the historical conditions, the purpose and aims of the federation and the geography of the federating States, to determine in what way of a federation would come into being. Broadly speaking, the federal[1] unions are the result of two opposite forces, the centripetal and centrifugal tendencies of the federating States. In other words, a federation is either a result of integration or of decentralisation. In the case of integration, a number of sovereign States voluntarily decide to unite together into a single federal State in view of a common foreign danger of aggression and for common defence or of some economic advantage resulting from union. Such a union is a result of centripetal forces. The federations of the U.S.A., Switzerland and Australia came into existence in this way. The second method of creating a federal State is the decentralisation of the existing unitary State. Such a State is usually too large to be administered conveniently from a single governmental centre. It has also a great diversity of language, culture and local interests which could be satisfactorily looked after by the autonomous local governments. These are the centrifugal forces which require that the former unitary State should be transformed into a federal union. The federations of Bharat, Pakistan and the Soviet Union came into being in this way.

Essential Conditions of Federation.

There are conditions which would favour centripetal or centrifugal forces to create a federal State and preserve its existence, such as follows:

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1. Geographical Contiguity.

The States which seek to form a federation should be geographically near each other. Geographical contiguity is certainly a favourable and even a necessary condition for the success of a federal State. If the component units are situated far apart, it would weaken the State in so far as its military defence and national unity are concerned. It will hinder the growth of national unity and culture. It will hinder communication and intercourse between various parts of the federation. Distance also leads to difficulties of co-operation for other purposes. This is the reason why the British Commonwealth cannot become a federation. Moreover, some of the problems with which we in Pakistan were confronted arose due to the long distance between East and West Pakistan, which led to the secession of East Pakistan as Bangladesh.

Move toward a central point.

2. Desire for Union.

Usually a federation is formed by the adjacent States which seek to unite together into' a single State in face of a common danger from a powerful neighbour. The need of common defence becomes a centripetal desire for union. Thus the U.S.A., came into being out of the thirteen Colonies which individually felt too weak to defend themselves against Great Britain and France. The Swiss Confederation was the result of the same desire for protection against powerful neighbours.

3. Desire for local Independence.

A mere desire for union would create a unitary State. It should be counterbalanced by an equally strong desire of the component units to preserve their local independence and autonomy. A federation comes into being only when, as Dicey puts it, the federating units seek union but not unity, that is to say, when they are willing to surrender part of their sovereignty but not the whole of it to the central government. They still want to retain supreme authority over matters of local interest and importance.

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4. Common economic interests.

Sometimes States form a federation for common economic interests. The federation of the German States in the 19th century was preceded by an economic union.

5. Community of cultural and other interests.

Another factor which favours the formation of a federation is the community of culture, language, religion, customs, historical traditions, etc. The community of these interests make a people a nation. "The aim of federalism is to produce a unified nation, and complete unity demands that the boundaries of State and nationality coincide." For instance, the federation of Pakistan is a result of the community of culture, religion and historical traditions. The present-day growing integration of the Arab States, e.g. U.A.R., is also due to their national unity of language, culture, historical traditions, etc".

6. Equality among the component units.

A condition which is essential for preserving and maintaining a federal union is the constitutional equality of all the component units, big or small, weak or strong. If the position of a component unit depends upon its relative strength, resources and size, it will weaken the federal unity, because the strong would be inclined to dominate the weaker members of the federation and take undue advantage of their weak position. It will also excite jealousy and rivalry among them. This was best illustrated by the dominating position of Prussia "in the German Empire. Hence the need is to treat all component members of a federation as equal in matters affecting the federation. This is usually done by giving them equal representation in one of the houses of the federal legislature, called the principle of parity.

7. Political Ability and Legalism.

Federalism is a difficult form of government, for it is a compromise between two contrary tendencies towards unity and autonomy. If too much of unity is aimed at, it destroys the federal structure and autonomy of the component units; but if autonomy of the units is too much emphasised, federation ceases to exist and a confederation or union of several States comes into being. Hence, the continuance and preservation of a federation demand that the citizens must have greater political ability and respect for their constitution than those of a unitary State. They should be able to appreciate their double allegiance both to the central and the unit government. They should also have a developed sense of legalism, that is, a general willingness to accept the decisions of the law-courts, as they interpret the constitution.

Salient Features of a Federation.

As distinguished from a unitary State, a federation has the following characteristics:

1. Supremacy of the Constitution.

The supremacy of the constitution lies in the very nature of the federation. A federation is an agreement between two-or more sovereign States to form a new State in which they exercise certain specific powers. This agreement is the constitution. It defines the powers and functions of both the central and provincial or unit governments. It must of necessity be supreme over both, so that none of them may violate its provisions and encroach upon the rights and powers of the other. The supremacy of the constitution ensures that the two sets of authorities, central and provincial, remain within their allotted sphere of powers. If any one of them does something against the laws of the constitution, its act is illegal and invalid, because it is unauthorized by the constitution. If any change in the powers of the national or provincial government is desired, it could only be made by amending the constitution according to the method laid down in the constitution itself. Thus is the supremacy of the constitution ensured. Its supremacy implies three things: (a) it must be a written constitution; (b) it must be a rigid constitution; and (c) sovereignty should lie with the constitution-amending body.

(a) ***Written Constitution.*** Constitution must be an inviolable document so that neither the central nor the provincial government may be in doubt about its powers and rights granted by it. In other words, the federal constitution must be written and definite so that there may-be no dispute or doubt about its provisions. Really speaking, sovereign States federate only when they know that their rights and powers are secure under a supreme, definite and written constitution.

(b) ***Rigid Constitution.*** Rigidity requires that the constitution can be amended by a definite and difficult process only, which the central government or the unit government cannot set into motion by itself. Thus it will remain supreme and binding on both.

(c) ***Sovereignty of the amending authority.*** Sovereignty in a federation lies neither with the federal government nor with the federating governments. It lies only with the constitution-amending body or bodies taken together, as provided by the constitution itself. It means that the legislatures of the central and provincial governments are not sovereign law-making bodies, as they are subordinate to the constitution.

2. Distribution of Powers.

The essential characteristic of the federation is the distribution of powers between the central and federating governments, just as the basic feature of the unitary State is the concentration of powers in a single centre of authority. This is the essence of federalism.

Principles of Distribution of Powers.

There is no uniformity of principle and method of distributing powers in the various federal constitutions of the world. Each of them distributes powers according to its own needs and conditions in which the federation came into existence. Nevertheless, there are certain principles which guide and determine the form of this distribution, as described below:

(a) ***Basic Principle of Distribution.*** The basic principle of distribution of powers in all federal constitutions is that matters of national importance and interest are allocated to the national or central government, while those of regional importance and interest to the competent units. As to what is of national importance of interest is determined by consideration of unity and security of the nation as a whole and the uniformity of treatment of certain matters on nationwide scale. Hence three kinds of powers or subjects are always allocated to the centre, viz., military and defence matters and foreign relations, for considerations of security of the nation. Currency, coinage, banking, tariffs, patents, copyrights, communications, citizenship and naturalisation, etc., and railways, shipping, weights and measures, criminal law and procedures, marriage and divorce laws, etc., are also allocated to the centre for the sake of unity and uniformity of legislation and policy for the whole nation. The subjects which are usually regarded as of local or regional importance and interest are education, public health and sanitation, local self-government, agriculture and land tenure, prisons, etc.

(b) ***Principle of Concurrent Powers.*** Certain subjects are of such a nature that they need to be legislated upon by both central and provincial legislatures. They are of both national and local importance. They are called concurrent powers. Both the Centre and the Units are given concurrent powers to legislate upon them. In case of conflict of laws, however, the federal law prevails.

(c) ***Three Methods of Distributing the Residuary Powers.*** As regards the actual method of distributing powers, there different ways are adopted, exemplified by the constitution of America, Canada and Pakistan (i) The first method is to enumerate the powers of the federal government, id leave the remaining powers to the component units. These remaining powers are called the *"residuary powers"* or the *"reserve of powers."* The aim of leaving the residuary powers to the federating units is to strengthen their position viz-a-viz the federal government. As they are left unenumerated, they tend to increase when new subjects arise, thus increasing the powers and strengthening the position of the component units in the federation. This method was adopted by the American Constitution, (ii) The second method is to define specifically the powers and subjects of the component units or provinces and leave the residuary powers to the federal government. This method aims at a strong centre. The Canadian Constitution is based on it. (iii) The third method is to enumerate the powers in three separate lists of federal, provincial and concurrent powers. The Constitution .of Pakistan of 1956 had adopted this comprehensive method. Really, it was first adopted in the Government of India Act of 1935. It is also being followed by the Constitution of Bharat. In this case, the principle of residuary powers assumes a new form. Although the framers of the constitution endeavour to enumerate all possible governmental powers and functions in three different lists, yet some new matters may arise in the future. These are also called the residuary powers. In the Pakistan Constitution of 1956, the residuary powers were allocated to the Provinces, while in the Indian Constitution to the Centre.

3. Supremacy of the Judiciary.

In other to preserve the supremacy and inviolability of the constitution and prevent the interference and encroachment by the federal

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provincial governments on the sphere of powers of the other, the federal judiciary is entrusted with the duty of protecting and interpreting the constitution. In this respect, the federal judiciary, that is, the supreme or the federal court performs two kinds of function. Firstly, it interprets the constitution whenever there is a dispute regarding any provision of the constitution between the federal government and one or more unit governments or between two governments of the component units. Secondly, it preserves the supremacy and inviolability of the constitution by declaring any law of the central or provincial legislature as *ultra vires* and therefore null and void, if it relates to matters outside its list of powers or violates any provision of the constitution. Thus the court acts as its custodian or guardian. In modern times, however, the judges interpret the constitution in such a way as to strengthen the hands of the central government as against the unit governments. This is done by applying the doctrine of implied powers, that is, the powers not specifically allocated to the centre but implied in other powers specifically allocated to it are also presumed to be given to it. Thus the centre becomes stronger by judicial interpretation. This is particularly true of the American Supreme Court which has since long applied the doctrine of implied powers and has thereby enhanced the powers of the U.S. Federal Government.

4. Bicameral Legislature.

A federal State is a complex organisation. It requires that there should be a double mode of representation; one for the country as a whole anr[1] another for the component units as such. It therefore requires two chambers. Moreover, the component units may differ in size, population and resources. Yet the principle of equality-or parity requires that they should have the same voice and equal representation in the federal government. In view of these requirements, a federal legislature consists of two Houses, one of which represents the nation as a whole, while the other represents the component units on an equal basis. That is the-reason why bicameralism is a necessary feature of the federation.

Problems of Federalism.

Federalism means the method and the form of dividing the powers of the central and unit governments in such a way that both remain co-ordinate and independent within their spheres of powers. It is confronted with several problems. They are variously solved in different federations. The most important of them are:

1. *A satisfactory distribution of powers.* Every federation is confronted with the problem of distributing powers between the federal union and the component units in such a way that the central government remains efficient while the diversity and autonomy of the component units are secure. In other words, the problem is that the centripetal forces for integration should not be so strong as to impair or destroy the autonomy and

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diversity of the units, and at the same time the centrifugal forces for autonomy and diversity should not be given so much scope as to weaken and destroy the federal union. A via media must be found and a balance of power between the two should be maintained. It is a difficult task because it requires that the two parts of the federation, the central and the units, should have an equal, co-ordinate and independent status. The general principle of the distribution of powers is easy to State: that which concerns the whole/nation should be allotted to the national government; and that which is of local interest and importance should go to the unit government. In practice, however, it depends upon several other factors- as to how the distribution is actually made in a federation, such as the historical conditions, motives and aims of federation, etc. The crux of the problem, however, is: how to prevent} the encroachment on the sphere of powers of the one by the other government of the federation. The purpose is achieved differently in different federations. The most common safeguard is the establishment of an independent court to interpret the constitution and decide conflicts of jurisdiction between the centre and the units. The Constitutions of U.SA., Pakistan, and Bharat have each set up a Supreme or Federal Court for this purpose. In the Swiss Federation, however, the people settle such constitutional disputes by the referendum and the initiative. Another method of safeguarding the allotted spheres of powers is by making the constitution rigid, that is, it can be amended by a different process from the ordinary law-making process of the central or provincial legislatures. Lastly, it is ensured by making the principle of equality of the component units and other rights of the units a part of the constitution, which cannot be altered except with the consent of the unit or units concerned.

2. ***Protection of the smaller units against dominance by the larger.*** The units in a federation are not equal in size, population and resources. Hence the smaller units are in danger of being dominated by the larger ones in legislation and financial matters. In order to safeguard the position and interests, of the smaller units, certain measures are adopted. Firstly, all the component units have equal representation in the national legislature, irrespective of their size or population. For instance, in U.S.A. all the component States have two seats in the Senate. Another method is to require that an amendment of the constitution is valid only when ratified by a majority of the component units.

3. ***Organisation of the relations between the Centre and the Units.*** The essence of federalism is the equality of status and the co-ordinate and independent position of the Centre and the Units in respect of their relations. An ideal federation is, therefore one in which each of them work within its allotted sphere of powers without any relation-with the other. But in actual practice it is impossible. The needs of security and unity of the

State as a whole and of the uniformity of laws and policy compel the centre to enter into relations with the units in such matters as administration, finance and legislation. These relations are of several kinds. They are established by law or by usage. The American Constitution provides that the Federal Government guarantees to each Federating State republican form of government and protection against invasion. Some of these relations are established by usage. For instance, the Federal Government in the U.S.A. gives grants-in-aid to the component States for the development of agriculture, vocational education etc. It is not binding on the State to accept i.e. but if once it receives that grant-in-aid, it binds itself to federal control in respect of the activities for which it received the money. In administrative matters, the relation between the two governments arises regarding the question of enforcing the federal laws. In U.S.A. and Brazil, the Federal Government enforces its laws by means of its Federal officials. This duplicates the administrative services and increases the expenses of the State inasmuch as there are two civil services, the federal and the local. In German and Swiss Federations, the federal laws are executed by the officials of the unit governments. The federal government maintains only such services which are its exclusive functions, e.g., the foreign or military services.

4. *A satisfactory method of amendment.* The federal constitution is supreme over both the centre and the units and, therefore, it should be so framed that neither of them could amend it against the interest and consent of the other. This can be done in the following way: firstly, by making it impossible to amend the constitution by either the Centre or the Units alone: secondly, by making it rigid, that is, by providing that it could be changed only by a different and difficult process of amendment from the ordinary legislative process: thirdly, by giving a share to both the Centre and the Units in the amendment procedure so that neither the centre nor the larger units could bring a change in the constitution without the participation and consent of other units.

5. *Secession.* One of the problems of a federation, which may even become a danger to its existence, is that of secession. A federal State is an agreement between two or more sovereign States to join together into a union which creates a new sovereign State. But the question is: Has any one or more of the component units the right to break away or secede from the federal union and become once again a sovereign State? This is the problem of secession. It is not merely an academic question. It has been a cause of the Civil War in the U.S.A. during 1861-64 and of a brief civil struggle in Switzerland in 1847. Even today it is a cause of political struggles and tensions in several federations, as, for instance, in the Indian Union, the Dravidian Deccan, the Nagas, Sikhs and Kashmiris are agitating for secession and independence from India. However, none of the federal

constitutions in the world, except that of the Soviet Union, recognises the right of the component units to secede from the federal union.

Merits of Federation.

The federal form of State has been commended by writers since Montesquieu. They declare that it has so many merits and advantages that future governments will be-federal in form.

1. ***Federation combines that merits of unity with diversity.*** A federation is a compact between several States to establish a united State, in which the federating States do not lose their individuality, and their diversity and autonomy. Thus they combine the advantages of strength that result from unity with the vitality and progress that result from diversity and autonomy. Thus federalism presents a happy blending of centralization and decentralization or national unity with local autonomy. It furnished, as Garner says, the means of maintaining equilibrium between the centrifugal and centripetal forces in a State of widely different tendencies. It provides uniformity in legislation, policy and administration where uniformity is desirable and diversity where diversity is desirable.

2. ***Experimentation is possible.*** From the above merit follows another advantage. Diversity and variety of administration, legislation and policy in various units makes it possible to experiment in new ways and methods of law and administration without affecting other units! If the experiment in successful, it is adopted by other units and even by the national government for the whole country.

3. ***Federation creates new states by peaceful incorporation and voluntary union.*** Unitary States generally come into existence by war and forcible conquest. But federation usually creates States by peaceful integration and voluntary union. The U.S.A. came into being by the voluntary union of the thirteen revolted Colonies of North America in 1787, and the six States of Australia formed the Australian Federation in 1902. More recently, the Union of Soviet Socialist Republics was established by a Union of 15 Republics. Such a voluntary union of independent States, Gettel says, "has made possible incorporation without conquest." Federalism has thus been the means of uniting many small States which would not have otherwise given up their sovereignty.

4. ***Federal unification brings strength, progress and prosperity to the small States.*** A small State has neither the resources of manpower nor strength to develop its industry and agriculture, commerce and trade, science and technology, arts and culture. But when several small States combine into a federal union, their resources of manpower, skill and talents are multiplied manifold which enable them to develop their economy, science, culture and society. This has been proved by the rise and development of the U.S.A., Canada, Australia, etc. More recently, it has been illustrated by the progress of the Soviet Union. Unlike U.S.A. the

Soviet Union is peopled by several races and nationalities with a great variety of religions, languages, customs and traditions. By uniting into a single federal union, these diverse races and nationalities of the Soviet Union have achieved great progress in science, industry, arts, social life and culture.

5. ***Federation lessens the danger of international wars and enhances the prestige of the federal State.*** The integration of several small States into a big federal State also contributes to the lessening of international intrigues, disputes and wars. Small States are weak States. They are constantly exposed to the intrigues and intervention by powerful States. This increases rivalry and tension among them and becomes a source of international aggression and war. The armed intervention by the U.S.A. in the little Lebanon in 1958 and by Great Britain in the petty kingdom of Jordan is a proof that these small States are unable to resist aggressive intentions of Great Powers and are also the cause of increasing international tension and war. The same is true of the many small States in Africa today. When the small States are united into a great federation, they become internally strong to rebuff and prevent all foreign intervention and aggression within their borders. The basis of federalism is union and union is strength. One of the strongest motives of establishing a federal State is defence against powerful neighbours. Moreover, federation enhances the international prestige of the new State because it is strong, united and powerful. This is abundantly illustrated by the two great Federations in the modern world, the U.SA. and the U.S.S.R. Federation provides the only means of strength and defence to them against foreign intervention and aggression. Lastly, federation is also a source of dignity for the peoples of small States. An American citizen, for example, calls himself an American, because it is more dignified than to call himself a New Yorker or a Californian, although he may be an inhabitant of New York or California.

6. ***Federation suits a large State with great territory or a small State with great diversity.*** Federation combines the two advantages of liberty with autonomy. Geographical distance produces differences and diversity of interests, customs and conditions in a vast State. Liberty and democracy demand that they should be given proper opportunity for development and expression. A unitary State would wipe them out, but a federal State preserves them on the basis of local autonomy and national unity. Federation makes democracy workable over large areas, as is illustrated by such countries as U.S.A., Pakistan India and the Soviet Union. Gettel has rightly remarked that, except representation, nothing has done more to make democracy workable over large areas than the system of a federal government. John Fiske has aptly remarked that a federal State can be as large as a continent. At the same time, a federation also benefits a small State which has great diversity of religion, social customs, cultural or

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racial differences and historical conditions of the past. A unitary State will behave despotically as it will wipe out these differences, while a federal union will preserve them on the basis of liberty with unity. This fact is illustrated by the federations of Switzerland, Germany, etc.

7. *It prevents despotic tendencies in a government.* Great writers, like Montesquieu, Lord Bryce and others have emphasized the merit of the federation as a check on the despotic tendencies of the government. The reason is that in a federation, the Centre and the Units serve as a check on each other as neither of them possesses sovereignty and yet each of them enjoys autonomy and independence within its own sphere of powers. The supremacy of the constitution and the independent position of the federal judiciary as a guardian of the constitution, act as checks on their despotic tendencies. Hence there is lesser danger of the establishment of a centralized and despotic rule in a federal union which would not usurp the liberties of the people than in a unitary State.

8. ***Federation means local or self-government on a large scale.*** A federal State is far more democratic than a unitary State, for it is based on self-government and autonomy of all the component units. Democracy is self- government. Federation is, therefore, democracy on a large scale. A unitary State may give good government to the people. But good government is no substitute for self-government. Self-government stimulates the interest of the people in their local affairs, makes them more politically conscious and vigilant of their rights, liberty and administration, develops their civic sense, makes them more patriotic, public-spirited and duty-conscious, educates and enlightens them about the problems and difficulties of the State and society. As he has a double allegiance to both his local and national government, a citizen of the federal State has an opportunity to participate in the elections and administration of his own locality or province as well as of the national government. He has more freedom in moulding his own destiny as he has greater voice in the affairs of his own province or federal government.

9. ***Federation is more suitable for modern society than the unitary State.*** Modern society is becoming increasingly complex, with great diversities of economic, social, religious, cultural, intellectual and other interests and occupations. They can be properly preserved and developed when the State is federally organised. Laski and other Pluralists have, therefore, strongly advocated that modern State is and should be federally organised.

10. ***Lastly, federation is the only way by which the whole world can be united into a single State***, in which there shall be no international disputes and wars and mankind would enjoy the blessings of eternal peace and happiness in conditions of national liberty and progress.

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Some writers even predict that the future world-State, when it comes, will be a world federation.

Disadvantages of Federation.

Federal State, however, is not free from several weaknesses and shortcomings. They are as follows:

1. ***Federalism is a source of weakness for the State.*** Federalism means a double system of government of the Centre and the Units. This duality is a source of conflicts in administration, legislation, finance and other government activities. As the functions, powers and authority in the federal State are divided between the central and units governments, the work of the federal State can only proceed through negotiations and even protracted correspondence and compromises between the Centre and the Units, which cause delays and also wastage of time and energy of the two governments. There is also possibility of a conflict in administration, jurisdiction and financial matters between the two, especially if the constitution is hastily and badly drafted as the American Constitution was. These conflicts, delays and wastages create inefficiency and weakness in the State, which contrast sharply with the promptitude, efficiency and simplicity of the unitary State.

2. ***Federalism prevents uniformity of law and policy for the whole State.*** The distribution of powers, the autonomy of the federal units and the dual system of government in the Federal State produce diversity or lack of uniformity in laws and policy. This diversity of laws becomes a source of trouble for the citizens when they move from one component unit to another where there is a different set of laws. It also hinders the administration of justice, for the law-courts of one unit have no jurisdiction in the other. These defects are particularly noticeable in the U.S.A., where the constitution has granted a large "reserve of powers" to the component States in many matters, such as marriage, divorce, education, etc.

3. ***The distribution of powers cannot be perfect for all times.*** Federalism is essentially based on the distribution of powers between the Centre and the Units. But it cannot be a perfect distribution which may be valid for all times. The reason is simple. Howsoever exact and exhaustive the present scheme of distribution of powers may be, it cannot foresee the needs, demands, views and changes in the future. Really speaking, there is no definite principle by which a matter can be finally declared to be of national or local importance, what is today considered a matter of local importance may become tomorrow a matter of national importance. But the national government cannot acquire the new power without a constitutional amendment or judicial interpretation. Yet the constitution cannot be quickly amended, because it is rigid, while the judicial interpretation is a slow and circuitous process. That is the reason why federal constitutions are necessarily conservative. The principle of

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concurrent jurisdiction and powers and the doctrine of implied powers are attempts to remedy this defect of federalism, but they also do not go very far, nor very fast.

4. *The rigidity of the federal constitution is also an obstacle to the harmony and progress of the federal State.* The double government and the distribution of powers in a federation divide the governmental operations into watertight compartments. The rigidity of the constitution clogs the wheels of progress and prevents the constitution to adapt itself to the changing conditions in the social life of the country. This is particularly true of the American Constitution which is one of the most rigid constitutions in the world.

5. *Federation is an obstacle to the conduct of a vigorous foreign and home policy.* Unlike the central government of a unitary State, the central government of a federal State cannot conduct a vigorous foreign policy, because it has to secure the consent and approval of the unit governments, which may not be forthcoming so quickly or willingly as the central government would like. This is the peculiar difficulty of the American government which endeavours to remedy this defect by means of mass propaganda.

Similarly, in home affairs the central government of a federation is handicapped by the division of powers, which defines and limits the powers of both the Centre and the Units. One or more of the unit governments may refuse to accept the policy of the centre, or may not pass necessary legislation in respect of matters of the provincial list or the concurrent list. As regards the provincial matters the national government cannot do anything except hope and pray. It may, of course, prod an unwilling unit into activity by exercising its powers of concurrent jurisdiction. But even this method has not the promptitude, simplicity and efficacy of the instructions and fiats of the unitary government to its subordinate local authorities and officials. Protracted negotiation between the Centre and the Units, resulting in compromises, delays and dilly-dallying are the necessary weaknesses of the federal State. This was the main weakness of the 1956 Constitution of Pakistan.

6. *Federal form of State is also expensive and uneconomic.* Federation is expensive and uneconomic because of the duplication of governmental machinery of the Centre and the Units and of the central and provincial public services. There are two sets of governments and two sets of public services and departments, which entail far greater expenditure than in a unitary government. Moreover, some of the component units are not very careful in planning and utilising their own natural resources in men and material, as they would be under a single, central supervision and planning. The federal form of the State also becomes uneconomic, for agriculture, industry and other natural resources are allocated by the

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constitution to the provincial sphere. The central government is prevented from interfering in them by the principle of federalism or provincial autonomy.

7. ***Federation is exposed to the danger of secession.*** The components units of a federation may be inclined to secede from the federal union due to their differences or grievances over language, culture, religion, race, economic inequality and the like. As each unit has its own government and constitution, the tendency towards secession is very strong in a federation than in a unitary State. Thus a federal State is exposed to the dangers of disunity and disintegration. Such a danger once threatened the Swiss Confederation in 1847 and the U.S.A. in 1861. It led, for instance, to the secession of East Pakistan in 1971, which became Bangladesh. It is also the course of the present-day Sikh trouble in India who want to establish an independent State of Khalistan.

Future of Federation.

Many writers are of the opinion that federal structure of the State is a transitory and temporary stage in the evolution of the unitary State. They cite the fact that almost all federal States are becoming more and more centralized because the central government in them acquires ever more authority and powers. The national government is extending the scope of its powers, while the unit or provincial governments increasingly look to it for financial assistance, planning and regulatory measures. One of the federal States, the German Empire, actually became a unitary State under the Nazi policy of centralisation. There is some truth in this criticism. In modern times, the structure of the federal State is under three strong pressures for centralisation. They are economic, social and military. Economic Forces and needs have always been stronger than political formulas and rules. The framers of a federal constitution may consider that industry and agriculture, trade and tariffs are of local importance and interest. But economic needs and plans of industrialisation, trade and tariffs, the needs to regulate the relations between capital and labour, the questions of inflation and scarcity, recession and the conditions of the working classes, etc., are such problems and pressures which can temporarily be tackled locally, but can permanently be solved only on the national plane. A provincial government in a federation is too puny in resources and too narrow-minded in outlook to plan and solve them. The same is true of the demands and needs for social reforms, and cultural, intellectual and educational developments. Here also the national government can undertake these developments on national scale better than a provincial government. This also requires centralisation of governmental authority and powers. Above all the dangers and threats of war in modern times are great causes for centralisation. War is always a great centraliser. When a State is threatened by war, it meets the 'challenge by concentrating all its resources and powers under a single seat of authority. That is why in respect of military organisation and war, a federal State behaves like a unitary State. In fact, "a dispersion of powers, as the federal principle implies, is incompatible with the troubled politics of a world that is scared by past wars and scared of new ones." In the face of these dangers and demands, the old patterns of decentralisation and autonomy cannot exist any longer.

But all this does not imply that the days of federalism are over, or that it is to be scraped from the organisation of the modern State system. On the contrary, we notice several tendencies and needs for federalism in the modern State and society. In fact, modern State and society are criss-crossed by contrary forces towards centralisation and decentralisation. Many economic and social forces and tendencies require them to be federally organised and governed. Even unitary States have adopted several forms of federalism. Moreover, as Laski said, 'modern society is so complex and varied in interest and functions, that it should not be centrally controlled and directed, but should be federally organised'. He said that just as "in the Middle Ages the tendency was towards feudalism, in the fifteenth and sixteenth centuries towards absolutism, so in the present time the movement seems to be towards federalism." Lastly, federalism is the only possible form of the future world-State, if and when it comes.

CONFEDERATION

Definition.

Although federation and confederation are derived from the same Latin root, yet they are quite different forms of organising the States. A confederation may be defined as a group or association of two or more sovereign States which have permanently given up part of their liberty for some specific aims and objects, such as defence. A confederation is stronger than an alliance between sovereign States, but weaker than a federal union. A confederation does not put an end to the sovereignty of the confederated States, as a federation does. It is a union of States and not a united State as a federation is. German words explain the distinction between a confederation and a federation very clearly. A federation is a *Bundes-staat*, a united State, while a confederation is a *Staatenbund* i.e., the union of States.

Federation and Confederation contrasted.

A federation must be clearly distinguished from a confederation. We point out here some of these distinctions as follows:

1. ***A confederation is a league of sovereign States while a federation is a single sovereign State.*** A confederation is much looser in organisation than a federation. In a federation the former sovereign States become integral parts or component units of a new State, while there is no such integration in a confederation. The confederated States retain their identity and separate entity. But they lose it completely when they federate

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into a new State. In other words, the confederated States retain their sovereignties, while the federating States renounce their individual sovereignties when they enter into a federal union.

2. ***Confederation is based on contract, and federation on constitution.*** The confederate States enter into an alliance based on an agreement, but the federated States are united by a constitution. It means that any one of the confederated States can withdraw from the alliance, but none of the federated units can do so, as they have lost their sovereign entity in a new union. In other words, confederation recognises the right of secession, but a federation does not. Withdrawal from a confederation is legal, while from a federation it is revolutionary.

3. ***A confederation has no central government.*** A confederation has only a committee or congress of delegates from various confederated States, who meet to vote by States and under instructions from their governments. Their decisions are not laws but only resolutions. In a federation, there is a central government with its own powers, organisation and machinery, consisting of representatives from various component units, who make laws, and adopt a policy, which are executed by its own officials over the whole country.

4. ***Citizenship.*** In a confederation, the citizens of the confederate States retain their citizenship. They do not become citizens of the confederation, but in a federation, they become the citizens of the federal State. Hence in a confederation, they obey only the laws of their own State and not of the confederation, while in a federation they obey the laws of the central government also.

Chapter 31

Judiciary

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Importance of the judiciary.

Judiciary is the third organ of the government. Ordinarily it is not considered to rank equal to the other two: but it is a mistaken view. Its importance is as great, if not greater, as that of the executive and the legislature. Henry Sidgwick has rightly emphasised that "the importance of the judiciary in political construction is rather profound than prominent. On the one hand, in popular discussion of forms and changes of government, the judicial organ often drops out of sight; on the other hand, in determining a nation's rank in political civilisation, no test is more decisive than the degree in which justice, as defined by the law, is actually realised in its judicial administration, both as between one private citizen and another, and as between private citizens and members of the government." It performs certain functions which are so very necessary for the life and happiness of the citizens. It ascertains and protects rights and liberties of the citizens. It punishes crime, and protects the innocent from injury and usurpation. There is no better test for excellence of a government than the efficiency of its judicial system, for nothing more nearly touches the welfare and security of the average citizen than the feeling that he can rely on the certain and prompt administration of justice. Justice is the foundation of the States.[49] Indeed, as Laski says, the judicial processes and procedures, in spite of their forbiddingly technical character, are more closely related to liberty than the splendid sentences in which Rousseau depicts the conditions of its attainment. Lord Bryce paints a dismal picture if the judiciary fails to work properly and honestly. He says: "If the law be dishonestly administered, the salt has lost its flavour; if it be weakly or fitfully enforced, the guarantee of order fails, for it is more by the certainty than by the severity of punishment that offenders are repressed. If the lamp of justice eyes out in darkness, how great is that darkness.[50] "Obviously, therefore," adds Laski, "the men who are to make justice in the courts, the way in which they are to perform their

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[49] Indeed, it was for sake of adjudication and justice and not for the sake of defence and war that the State grew up in the ancient times. As Aristotle writes. "Justice is bound up with the States for adjudication is the ordering of political society". *(Politics, Bk. 5, Chap.2)* Zinimern writes: "The real motive force that drove men into the city or State was not the need for efficiency in time of war so much as the need for efficiency in lime of peace: They came together not so much for safety as for justice" Cf. *Greek Commonwealth*, p. 82.

[50] *Modern Democracies.* Vol II. p. 384.

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functions, the methods by which they are to be chosen, the terms up which they shall hold their power and other related problems, lie at the he of political philosophy. When we know how a nation-State dispen justice, we know with some exactness the moral character to which it c pretend."

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Functions of the Judiciary.

In modern times, the judiciary performs several functions, t there is no uniformity about them in various States. We shall enumer here the most important of them.

Settlement of Disputes:

The primary function of the judiciary is to apply existing laws the cases or legal disputes brought before the courts for settlement. Th cases may be civil or criminal. When a case is brought before a court, duty is first to find the facts, then to discover the law applicable to the ca and pass a judgment according to it. Thus the judiciary applies the la ascertains and decides rights, punishes crimes, administers justice a protects the innocent from injury and usurpation. Nevertheless, to a judge law is as it is laid down by the legal sovereign, no matter if it is good bad, just or unjust, moral or not moral.

Interpretation of Laws:

Sometimes the law is not clear, either because the law-makers d not foresee the circumstances of the case, or the wording of the statute ambiguous or because two or more laws applicable to the case is in confli In deciding such cases, the judge has some discretion in interpreting t laws and deciding the case in the light of the principles of-justice, equi and commonsense. In this way he not merely applies a law but even mak it. Such decisions become precedents for other judges who have to deci similar cases later on. These precedents become the judge-made laws case-laws. They play an important role in the legal systems of su countries as Britain, U.S.A., Pakistan, India and other countries whi follow the English Common Law. In these countries, the judges m become the creators of new laws and thus supplement the work of th legislature.

Preventive Justice:

In modern times, the judiciary performs not only the function punishing crimes, and settling disputes, but has also the duty of preventi the violation of rights or threatened infraction of the law. This is call preventive justice. It is performed by issuing writs and restraining orders injunctions. Failure to obey an injunction or a writ constitutes contempt court and is punishable by imprisonment or fine.

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Judicial Review:

In a federal State, the judiciary has the power to declare the acts or statutes of the central or provincial legislatures or executive orders *ultra vires* or unconstitutional if they are outside their jurisdiction or powers as defined by the constitution. The constitutions of such federal States as the U.S.A., India and Pakistan have conferred the power of judicial review on their high and supreme courts.

Advisory Opinion:

In many countries, the judiciary performs the function of giving advisory opinions on questions of law when requested by the executive or the legislature. This function is usually performed by the High Court or the Supreme Court, as in Pakistan.

Non-judicial Functions:

Almost in all countries, the judiciary is called upon to perform certain miscellaneous functions of non-judicial nature. For instance, the judges may be empowered to grant licences, or act as receivers in bankruptcy cases, guardians of minors and administrators of estates, or to naturalise the aliens, etc.

INDEPENDENCE OF JUDICIARY.

Independence of the judiciary means that the judge should be independent of the other two organs, the legislature and the executive, so as to administer justice with impartiality and according to law. For this purpose it is necessary that the appointment and tenure of the judges should not depend upon the pleasure of the other organs.

Necessity of independent judiciary.

First of all, an independent judiciary is necessary for securing an impartial trial of the accused. It protects the liberty and rights of the citizens. It is the bulwark of individual liberty. Secondly, it has to try State officials for offences committed by them in the course of performing their public duties. An independent judiciary can protect individual liberty and rights from official infringements. Thirdly, the, independence of the judiciary is essential for the protection of the constitution and law against encroachment by the government, or private individuals. This is particularly true of a federal constitution which has to be preserved from the encroachment by the federal or unit governments.

How the independence of judiciary is secured.

The following factors contribute in a large measure towards securing the independence of the judiciary:

1. **Mode of Appointment of Judges.**

Experience of the past centuries has shown that the independence of the judges is greatly determined by the way they are appointed. Three different methods are used in different countries for the appointment of the judges. They are: (i) election by the people (ii) election by the legislature; and (iii) appointment by the executive.

(i) ***Election by the people:*** In some States, e.g., U.S.A., Switzerland, the judges are elected by the people. This method was first used in Revolutionary France owing to the strong influence of the theory of the separation of powers in that country. This method is, however, very defective. It corrupts the fountain of justice at its very source. The elected judges are necessarily under the influence of the voters and the parties which have elected .them. They cannot be impartial, honest, dignified and independent. Their judgments are prejudiced. An elected judge is a partisan and partisan judge cannot defend the rights and liberties of the individuals. "The desire to court popularity is a temptation few will be able to resist when their re-election is dependent on their popularity." In short, the elected judges are more of politicians than judges.

(ii) ***Election by the Legislature:*** This method is no better than the method of popular election. For, says Laski, "If the choice is to be made on grounds of legal fitness, the average member of legislature has no special qualification for judging, and he is therefore likely to be swayed by political considerations irrelevant to the problem." The legislature tends to elect politicians to judicial offices rather than judges. A legislature is an arena of party politics and the judges are elected on party grounds. "Such party election encourages a type of judge who is far removed from the ideal of fairness and reasonableness which judicial decision demands."

(iii) ***Appointment by the Executive:*** Appointment or nomination of the judges by the executive, that is, by the minister in charge of the judicial department, is considered as the best available method and is applied in many countries. It is claimed that the executive is the most appropriate agency to judge the capacity and qualifications of the candidates to a judicial post. Experience has also shown that this method is greatly free from party bias in the choice of the judges. Yet it is not free from all defects. "Simple nomination" says Laski, "as in England by the Lord Chancellor, is not, I think, an adequate system. It leaves the door too wide open for measurement of fitness in terms of political eminence rather than judicial quality." However, the method of appointment can be improved by certain safeguards. Laski suggests that the appointment by the Minister of Justice should be made with the consent of a standing committee of the judges, which would represent all sides of their work. The judges know well the nature of their work and can judge better the qualities of the candidates, while they are not likely to be influenced by party considerations. This is the method used in the appointment of judges of the High and Supreme Courts in Pakistan. Another improvement in this method is selection by competitive examination. The minister appoints only such candidates as

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have been successful in it. The examination method is now applied in many countries, including Pakistan, for recruiting subordinate judges.

2. Long Tenure of Office.

Judges are appointed either for a short term or a long term of office. Experience has shown that a short tenure is unwise and defective. It destroys the independence of the judge, inclines him towards corrupt ways, as bribery, so as to enrich himself during his short term of office. It makes him more subservient to the executive which appointed him. Such a judge will do no justice. A long tenure frees the judge from such temptations. It makes him free and independent. In modern times, judges are, therefore, appointed for long terms or lifelong tenures. They hold office during good behaviour. "Once appointed," writes Laski, "a judge should obviously hold office during good behaviour; otherwise he cannot acquire that habit of independence inherent in his position." A long tenure is, obviously, a lifelong tenure. Hence the age of retirement of a judge is usually fixed at 60 to 65 years, as in Pakistan and even longer, as in *U.K.* and U.S.A.

3. Promotion and security of office.

The principle of the independence of the judiciary further requires that a judge, once appointed, should feel secure in his office as regards its tenure and promotion. In the judicial department, however, promotion cannot go by seniority alone, because inefficient judges would then be promoted to important positions. Nevertheless, an able judge should feel that his chances of promotion will not be dimmed by a clever colleague who knows how to pull political wires at the right time and place. Hence neither the promotion, nor the removal of the judges should depend upon the pleasure of the executive. They must be decided by the principle of good behaviour. Then only able and efficient judges will be promoted and corrupt and inefficient ones removed from office. Good behaviour should be judged by an impartial body, like the legislature. This method is followed in England, Pakistan, India, etc. In England, a judge is dismissed from office only when the two Houses of Parliament by a joint address request the Queen to remove him on grounds of corruption or moral turpitude.

4. Fixed and adequate salary.

Another condition which makes for freedom and independence of the judiciary is an adequate and fixed salary, which makes a judge feel secure, independent and fearless in the performance of his duties. A low-paid judge is inclined to be corrupt: he endeavours to supplement his meagre salary with bribery. Such a judge will not dispense justice. The salary should be adequate to befit the social position of the judge. Finally, the constitution of the State should provide that the salaries of the judges should not be alterable during their term of office.

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5. Qualifications of Judges.

The administration of justice presupposes an adequate knowledge of law. Law is a technical subject. Only such persons who have studied it carefully can properly understand its technicalities. The judges, therefore, must be professional experts who can determine legal rights and duties in particular cases with knowledge and skill. Hence only men of legal and forensic qualifications should be appointed as judges. A judge, however, must possess not only the qualities of head but also of heart. He must be a man reputed for his impartiality and independent views. He must be honest and profoundly learned in law. In early Islam, the moral and intellectual qualities of a man were essential prerequisites for a judicial appointment. In present times, the qualified judges are sometimes chosen from among the practising lawyers and advocates.

6. Separation of the Judiciary.

One of the merits of the theory of separation of powers is that it emphasises the separation of the judiciary from the other two organs of the State, especially from the executive. The same person should not be a judge as well as a prosecutor. If so, there will be a miscarriage of justice. The prosecutor being also the judge will necessarily punish the accused. This has been the experience of the British rule in Indo-Pakistan subcontinent, where the Deputy Commissioners act both as judicial and executive officers.

ORGANISATION OF THE JUDICIARY

Hierarchical Organisation of the Courts.

One feature is common in the organisation of the judicial systems all over the modern world: the courts are arranged in an ascending or hierarchical order of the lower and superior courts, determined by their sphere of powers or jurisdiction. Broadly speaking, at the bottom lie the courts of first instance with very restricted jurisdiction or power of decision. Above them are the intermediate courts of appeal with greater powers of decision and jurisdiction. At the top are the high or supreme courts of review or cassation with powers to hear appeals from all subordinate courts and also special jurisdiction in certain matters, such as the constitutional disputes in the federal States. The power of review or cassation means the power to annul the decision of a subordinate court or tribunal. The three types of courts are, however, differently designated. Here below is a sketch of the judicial organisation in some countries of the world:

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Chapter 34

Public Opinion

The basic distinction between the modern and earlier States lies in the influence and effect of public opinion and the part which propaganda plays today. In all States of the past public opinion was unknown, but the modern State is at once a master and a servant of public opinion and propaganda. A democracy is a government by public opinion.

Nature of Public Opinion:

What is an Opinion? In order to understand public opinion, we must first know what an individual opinion is, for in some way or another public opinion is a resultant of individual opinions. An individual opinion may be defined as the expressed idea or attitude of an individual on an issue confronting the group of which he or she is a member. Expression is necessary, for an unexpressed idea or attitude cannot be an opinion. But here arises the first problem about opinion formation. On certain occasions even unexpressed or silent opinions can have great affect of public opinion. Moreover, individual opinion may be positive or negative, for or against the issue in question. Further, an individual's opinion is likely to change over time, when his or her experience, knowledge, or age environment changes. What is more, the opinions of no two individuals are absolutely alike, because the environment, experience, and knowledge of no two individuals are the same, even if they live under the one and the same roof. Lastly, though not in the least, an individual's opinion may be at first vague and indefinite. But it may become more precise, definite and stable after some time, long or short, when he or she is pressed by the urgency of the situation or problem, and/or by the alertness of his or her mind, experience or knowledge.

Now the problem is: How do the opinions of many individuals, sometimes millions of people change or are transformed into public opinion? This question has occupied the attention, and even baffled the minds of innumerable thinkers, philosophers, sociologists, political scientists, Statesmen and researchers for more than two centuries. The question is at once important but difficult. It may be said, and rightly, that public opinion is the sum of individual opinions on an issue. But, then, it is noted that it is more than merely sum of individual opinions, because sometimes it acquires a force and vitality unconnected with any specific individual. For example, the word "Pakistan" was only an idea, an opinion,

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of an unknown student, Ch. Rahmat Ali, in 1937. But in a matter of ten years, it became a tremendous popular force, now called "Pakistan Movement." The well-known German sociologist, Ferdinand Tonnies, said, "Whatever may come to be considered a public opinion, it confronts the individual with an opinion which is in part an extraneous power." Another author has explained it as a crystallization process, which is, as he says, "the transformation of individual attitudes into a collectivity can exert influence". Sometimes this transformation is so dramatic and revolutionary that we may characterise it as "the genie in the bottle effect". As the children's story-book tells us, there was a genie that was kept by his master in a bottle. But when his master let him out of the bottle it loomed so large over him that he was frightened. The same thing happens in history and politics at certain times. The observation of the crowd behaviour seems to confirm the existence of some psychic entity that may seize hold of many individuals at once and lead them to behave in ways that no one of them would have behaved under other circumstances. In some situations, this kind of collective behaviour of public opinion sweep way powerful governments or dictators, as for example the overthrow of Ayyub Khan's government in 1969 or of Mr. Bhutto's government in 1977 in Pakistan, or of General No Win in 1988 after he had ruled Burma for more than a quarter of century. Public opinion also manifests itself in more peaceful but effective manner, as for example the overthrow of Winston Churchill's government in the general elections of 1946 in Great Britain, although he was the saviour of his country in the 'World War II (1939-45). Hence it is asked, why there are sudden and radical shifts in public opinion and therefore in the governments and their policies and how to avoid them, especially in a democracy? To put it differently, how to organise public opinion so as to avoid sudden shifts and changes in it. This question is particularly important for the new nations or developing countries, which are sometimes bedevilled by them. cause continuous problem to:-

Public opinion grows out of a great variety and diversity of the views, beliefs, ideas and prejudices of the myriads of individuals or citizens of a State, when they think and want to do something in common. In their everyday life, they think, feel and act differently, and diversely, even divergently. But when required to think and act in common under the influence of a leader or an event, they may create a unity or uniformity of belief, opinion and behaviour. This is the Public *Opinion*.

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Definition:

Lord Bryce defines it thus: Public Opinion is "the aggregate of the views men hold regarding matters that affect or interest the community. Thus understood, it is a congeries of all sorts of discrepant notions, beliefs, prejudices, aspirations. It is confused, incoherent, amorphous, varying from day to day and week to week, But in the midst of this diversity and

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confusion every question, as it rises into importance, is subjected to a process of consolidation and clarification until there emerge and take definite shape certain views or sets of interconnected views, each held and advocated in common by bodies of citizens." V.O. Key, an American behavioural political scientist, defines public opinion as "those opinions held by private persons which governments find it prudent to heed." Unexpressed or silently-held opinions do not become public opinion. Instead, publicly expressed opinions become so, and more so if expressed with conviction and intensity. Generally more attention is given to informed opinion, and to the views of expert, interested or elite groups because of their particular abilities, influence or experience.

We may define public opinion as the collection of individual opinions on an issue of public interest, which can exercise influence over individual group and government behaviour or policy, formed under the influence of or communicated by a leader, party, or group.

In short, public opinion needs four things: individual opinions + a public issue + communication media + relationship of influence between leaders and the led. Harold Lasswell called the influencing leaders as the influential.

Public Opinion or Majority Opinion.

Generally speaking, public opinion is a majority opinion. At least, it must become so, if it is to be the effective and ruling opinion. But neither in its formation nor in its nature is it necessarily a majority opinion. "Public opinion is not the name of a something, but a classification of a number of some things." As we said above, it arises from a welter of several minority opinions struggling for acceptance by the bulk of the people but even if it i accepted by the majority, it may not be yet a public opinion. Majorit opinion is public opinion only when it aims at the common good an satisfies the general interests and well-being of the whole nation an embodies the willing consent of the minority or minorities in the nation. is aptly remarked by a political scientist that "a majority is not enough f public opinion, and unanimity is not required, but the opinion must be su that while a minority may not share it, they feel bound by the convicti and not by fear to accept it." In other words, it must be based intelligence, educated opinion, and consent of all, and not on ignorance this majority or fear and coercion of the minority. A true public opinion therefore, one which is prompted with due regard to public welfare. It r on weighing the facts of the case. It must be acceptable to the minority out of fear but willing acceptance of the common good, in which it also a share. Unanimity is thus not necessary to public opinion; what is esser is the common good or national welfare at which it must aim. A minc opinion can become public opinion, if it aims at common good. Willoug has rightly said, "In any community of men that which has assumed

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character of public opinion is the result not of the opinion of all is members but only of those persons, few or many, who are led to think and to form judgments regarding matters of general interest."

Two kinds of Public opinion; Political and Social:

Public opinion is not merely political: it can also be social. Social opinion is concerned with matters of social importance, in which political leaders and governments have little or no influence, except in totalitarian or ideological States. Social opinion can be seen in fads and fashion, which often spread so far and so suddenly over whole or part of a society. It is, for example, expressed by public attitudes towards the film stars. It is also frequently formed or organised by commercial firms, enterprises or corporations, by advertisement or publicity campaigns, e.g. for the sale of a new brand of soap by a film star. In Political Science, however, we are not concerned with social opinion. Our field of study is political (public) pinion only.

Characteristics of Public Opinion:

We may now sum up main features of public opinion:

1. **Living issues of politics:**

Public opinion is always about living issues or politics in this country, which divide the people into various groups or parties with differing opinions. They deal with matters which are controversial or debatable in the society

2. **Non-identifiable group:**

For opinions to be 'public', it is not necessary for the people to be in face-to-face contact with each other. What is necessary is that they hold the same opinion, even though they do not know each other. The "opinion" is held by a collection of people linked by common opinions or desires.

3. **Widely-held opinions:**

As we have said above, public opinion is not necessarily majority opinion or unanimous opinion. Minority opinion may carry more weight, if it is expressed effectively at times when the rest of the people are divided or apathetic towards the specific issue in question.

4. **Pooling of differing opinions:**

Arithmetic of public opinion is very strange. It is not the sum-total of all the opinions. Some people are indifferent and apathetic to political issues and have no opinion. Others hold widely different opinions, some hold opinions more firmly and continuously, while others not so. But no opinion is held the same permanently. We do not hold opinions on very issue. Indeed, there are as many "publics" as there are opinions. But out of this welter of opinions may emerge a public opinion on an issue which affect or particularly interest the people.

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5. Intensity of opinions:

The question is: Which of the differing opinions emerge to become the public opinion? It depends upon the intensity of the opinions held by various groups or "publics". If a group of people holds opinion more intensely and strongly than another group, it will become public opinion, even though it may be a smaller group than the other. Public opinion is the opinion of the dominant group in the society, whether it is due to wealth, education, official position, prestige or influence. Generally, more weight is given to express opinions than to *unexpressed ones.*

6. Informed opinion:

Generally more attention is given to informed rather than uninformed opinion. This is the reason why the views of the elite group or groups influence and form public opinion more effectively than those of the common people. It is due to their particular abilities, education, organisation and experience.

7. Continuity and Change in Public Opinion:

Public opinion may change from time to time, or may remain the same. More often than not, public opinion tends to persist over time. But conditions may arise in which it may change. The elements of persistence, continuity and stability of public opinion or of its change and transformation are religion, ideology, nationalism, racialism, as well as modernity, rationality, secularism, science and technology, education, industrial development, national interests, and individual's character and personality. On the whole, religion, ideology, nationalism, and racialism tend to make public opinion more stable and persistent, while modernity, rationality, secularism, science and technology, industrial development, urbanization and education tend to change it. If the change factors are more influential or dominant in the society, public opinion/will tend to change rapidly and continuously. But if the stability and continuity factors are more dominant, it will remain the same.

Dynamics of Public Opinion.

Public Opinion is not a grand total of the opinions, views and beliefs etc., of all the individuals. This is impossible, "It is", as Professor Soltau writes, "usually the adoption by the greater part of the population of a point of view, of a policy, ideal or prejudice, put forward by some interested persons or groups, using the various methods of dissemination or propaganda at their disposal—press, books, public meeting, radio, advertising and especially communication from person to person. Usually, Public Opinion begins as the opinion of a minority or a small group of persons. It issues vaguely, hesitatingly, imperceptibly it is opposed by the rival opinions of several other minority group opinions. At first, the majority of the population are indifferent to the conflicting opinions of the

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minority groups, for few people are really interested in politics and in matters of common concern. So there is at first not one public opinion but several public opinions, each struggling to win the majority of the nation to its own way of thinking. When most people accept one of the several competing minority opinions, it becomes the public opinion or majority opinion, unanimity not being of this world. "Some currents of opinions or sentiments", writes Lord Bryce, "develop more strength than others, because they have behind them larger numbers or more intensity of conviction; and when one is evidently the strongest, it begins to be called public Opinion *par excellence* being taken to embody the views supposed to be held by the bulk of the people," Thus arises Public Opinion not as a simple arithmetical addition of myriads of individual opinions in a nation but as a result of many social and political forces of propaganda and pressure, which seek to win the majority, of the people and influence the policies of the government. This is the way how popular government is possible, that is, government by public discussion and consent. It is only then that the general will arises.

How is Public Opinion formed?

According to Lord Bryce, three classes of persons have to do with the making of public opinion. They may be described as the thinkers, propagators and the mass of people.

(1) Public Leaders and Thinkers.

They are the men who seriously occupy themselves with public affairs and devote their lives mostly, if not wholly, to the study and solution of public affairs and national problems. They are either professional politicians, legislators, journalists or are otherwise actively engaged in politics, or are private citizens who care enough for their duty as citizens to give constant attention to what passes in the political world. Their number is small which, is indeed, an exceedingly small percentage of the voting citizens. But their importance is great. It is they who make public opinion, as its thinkers and originators. They are public leaders. They know the facts. They think out, marshal and set forth, by word of mouth or pen, the arguments meant to influence the public. They use the press, platform and other agencies of public opinion to communicate their views and opinions to others. In modern democracies, in general, and in countries like the U.S.A., in particular, these makers of public opinion are the powerful organised interests, institutions, and corporations who manufacture public opinion like any other commodity. As there are various kinds of leaders and thinkers, there is a variety of different and opposite opinions.

(2) Propagators and Moulders of Public Opinion.

The second class consists of those who also take interest in politics. They read the daily newspapers and political literature; listen to

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public speeches and to the radio broadcasts and TV telecast, and give close and unremitting attention to public questions from day to day. They form judgment upon the facts and arguments presented to them. Their judgment corrects and modifies the views of the first class. Thus they become, though not the originators, but certainly the moulders and propagators of public opinion. Most of the persons of this class belong to a party, but they are generally not partisans. They are ready to listen to the views and opinions of other parties and consider fairly both sides of the question. Owing to their impartiality and non-partisan spirit, they become the real makers of public opinion. The worth and value of public opinion really depends upon the honesty, public spirit, impartiality, political intelligence and sound judgment of this class of persons. The number and quality of this class decides the quality and effectiveness of public opinion. What they think and feel is the opinion of the nation as a whole. It is Public Opinion at its best. To this class belong the members and workers of the various parties, the pressure groups, and the lesser interests and institutions in the nation, and all those who are interested in politics.

(3) Masses of People.

The third class includes all the remaining masses of people who are generally indifferent to public affairs, reading little and thinking less about them. So far as they have any opinion, they simply borrow or adopt it from the first two classes or from the place or social class to which they belong. Men of this type will now and then be attracted by the personality of a leader or fascinated by a movement. They will follow him or it, not because they understand his or its politics but because they like some of his or its qualities or because they are sentimentally attached to his personality or movement. This large group neither makes opinion as thinkers, nor helps to mould it as critics, but it swells its volume by its numbers. The actual size of this group varies from country to country, but it is everywhere very large. By far the largest majority of the people of a State belongs to this class. In a democracy, it is at least as large as the electorate.

Importance of Public Opinion in Modern States.

In modern States in general and in the democracies in particular, all power springs from the people. But the question is: How are the people to exercise its power? In the popular and representative governments, it is possible in two ways only, viz., by voting and by the expression of public opinion. Elections are no doubt indispensable for the working of a democratic popular government. But they must be preceded and prepared by the action of the public opinion. Moreover, in the intervals between two elections, it keeps the party-in-power in check, guides the government in the making of its policies, and restrains the party government from abusing its power and from becoming oppressive or tyrannical. When a ministry or legislature knows that the public opinion is opposed to their policy or plan they will pause before adopting or enforcing it. They will give up unpopular plans or purposes. *Vox populi, vox Dei.* Public opinion is the pulse of the people and a wise government must always keep its fingers on the pulse, if it is to remain popular and responsible to the people. Good and sound public opinion will support a government when it is on the right path and restrain and criticise it when it is in the wrong. It is rightly said that alert and intelligent public opinion is the first essential condition for the success of democracy. It is a watchdog of the government and administration. It has been aptly said that the true function of public opinion is to bring about a proper relation between the legal and the political sovereign. It thus makes ideal democracy a reality.

Public opinion may suffer from various drawbacks. In the nineteenth century liberal democrats usually believed that man was rational, interested in politics and capable of making logical decisions based on his needs. Moreover, it is believed that freedom to express ideas in open competition with others is the best means of correcting errors in bias. Though each party may plead its own cause, it is expected that the truth or the most practical answer will eventually emerge. In actual fact, however, people do not act rationally. Possibly, they fall an easy prey to the "hidden persuaders" of political-propaganda agencies, public relation firms, and of the advertisers. Opinions are often formed by family environment, cultural influences and experiences. Opinions of the individual are, as often as not, highly irrational. This is the reason why public opinion has been accused of being erratic, inconsistent and conservative. In backward countries and nations, public opinion is influenced, sometimes openly and at times not so openly, by foreign sources. This is done through propaganda, which is one of the most potent sources of influencing public opinion.

Dangers of Public Opinion.

If public opinion is ill-informed, unintelligent, prejudiced and misguided, it becomes a great threat to the strength, stability and unity of the democratic State. Then the watchdog of democracy becomes the mad dog of tyranny. Under a dictatorship, it becomes an instrument of violence and intimidation. The dictator bans all parties except his own; he controls all the agencies of public opinion and propaganda, while the people are denied the rights and freedoms of speech, press, association and public meeting. He indoctrinates the public mind and thus manufactures public opinion in his own favour. When public opinion is made and influenced by ignorance, prejudice, parochialism, and petty hatreds, class antagonism, and vested interests, it ceases to be public. Then the voice of the people is no longer the voice of God, but becomes the voice Satan. Another source of polluting the spring of public opinion are the frustrations, maladjustments and such other mental and moral aberrations of the otherwise normal individuals. They prevent them from thinking and reacting rationally and

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properly to the public problems and issues, especially in times of storms and strains of modern life and in the national emergencies and crises.

Conditions of Sound Public Opinion.

Both the importance and dangers of public opinion in the modern State make it necessary for us to consider the conditions which are essential for the creation of a sound, wise and intelligent public opinion. They are as follows:

1. **Education.** In the making of a sound and intelligent public opinion, education of the citizens comes first. "The education of the citizens" writes Laski, "is the heart of the modern State" The citizens must be properly educated if they are to play their part well in the life of the community. An educated person is constructive, critical and interested in public affairs. An illiterate person is mostly guided by his blind passions or sentiments or is duped by demagogues and the like. But education should be free from such vices as prejudice, fanaticism, intolerance, obscurantism, etc. It must not be dominated by Church or religion and such other vested interests.

2. **Free Press.** Education takes a long time to influence public opinion, that is, when the boys, girls and the youth have passed through the schools and colleges. But the public opinion is directly and immediately made and influenced by the press. Yet it is only free press that forms it on a sound and proper basis. Negatively speaking, a free press is one which is not controlled or subsidised by men of wealth, vested interests, or communal bodies, or by the government. Positively speaking, it means one which gives the public honest, impartial, free and untarnished news, views and reviews or information and is also free to criticise the news, views and reviews or information supplied by any other agency, private or governmental. When all arguments are voiced and criticised before the people, they will know how to choose the sound and reject the unsound ones. Thus the free press will help in the formation and expression of a sound public opinion.

3. **Free Discussion.** Public opinion is the opinion of the public. But before the public can form an opinion, it must have the freedom of discussing the pros and cons of problem. Public discussion requires freedom of thought, opinion, speech, association, assembly and of other means of communication by press, and post, wire and wireless. Discussion and expression of opinion may be face-to-face or through the press and postal correspondence of through the medium of electric wires or radio-waves or of television. By free discussion and expression the people communicate their wishes and opinions to the seat of governmental authority and also expose errors, correct mistakes and guide the policy of public bodies and administration.

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4. **Social Harmony.** The citizens of a State must not be divided by irreconcilable differences of religion, culture or of commercial and ethnic loyalties. Where barriers of caste, creed, colour or class divide a people into different strata or compartments, there can be no "public" in the proper sense of the word. In order to be a public, a population must possess community of interests and unity of tradition and outlook and must also agree on certain fundamental political doctrines. There should be a common way of life. There should be unity in diversity in their national life.

5. **Economic Security.** All the people in a State should enjoy a decent standard of life. They should have economic security by having a decent source of income. A nation divided into too rich and too poor classes cannot form a sound public opinion, for the poor classes will be exploited and controlled by the richer ones. They will have no means of expressing their opinion. A starving man has no opinion of his own.

Hindrances in the way or Sound Public Opinion.

We may now briefly describe those factors which hinder the growth of sound public opinion. They are, firstly, illiteracy or lack of education. An illiterate person does not possess sufficient information and knowledge to understand the problems of his State or take interest in public affairs. He is ignorant and apathetic, while his mind is filled with prejudices, narrow sympathies and sentiments. Hence he lacks a sound opinion of his own. Secondly, economic inequality is another great hindrance to the formation of sound public opinion; a poor man has no time or leisure to devote his thoughts to public matters. Thirdly, deep-seated religious and sectarian differences are great obstacles to the formation of a proper and sound public opinion. Fourthly, dishonest press which provides false and mischievous information pollutes the spring of public opinion at its very source. The press should not be used to deceive the public or to further the interests of any selfish group. Fifthly, the unwillingness of minorities to acquiesce in the majority rule will obstruct the proper expression of public opinion. Sixthly, presence of selfish leaders and unscrupulous pressure groups, devoted to the vested interests of the wealthier classes, will mislead the people and prevent the formation of sound public opinion.

How to ascertain Public Opinion.

One can ascertain public opinion by: (1) reading newspapers, (2) hearing public speeches, (3) scrutinising election results, (4) studying the programmes and plans of political parties, (5) conversing with friends, neighbours and other people about public affairs, (6) and by mixing with the people in general to hear their views and reactions to political events and problems. As Lord Bryce says, public opinion can be ascertained "by moving freely about among all sorts and conditions of men an

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Chapter 35

Pressure Groups

Pressure groups have existed in all States and in all ages. But only in modern times they have become numerous and important in both democracies and dictatorships. In democracies, they work openly, while in dictatorships not so openly. "Groups are devices by which the individual fulfils personal value and felt needs." We shall first enumerate different types of pressure groups and then discuss their methods of working and exercising influence, and lastly their effects on the politics of their countries.

Pressure Group:

A pressure group may be defined as a group of individuals organised for promoting their special economic or some other interest by influencing the government or a public officer. The means used by pressure groups to apply pressure or influence on the government, legislators, administrators, political parties are agitation, persuasion, 'political sniping' public opinion-mongering or even bribery.

Pressure groups of various kinds. Most of them are organised for the protection or promotion of economic interests e.g. of trade unions or trade and industry chambers; some are for educational, social and religious purposes or reform. They are all interest groups. A few of them are set up for promoting some humanitarian or philanthropic purposes, e.g. the CND (the Campaign for Nuclear Disarmament or the Greenpeace. Some pressure groups may consist of one or two individual while others are of large in size and numbers.

Interest Group:

A pressure group may also be called an interest group. An interest may be defined as "any conscious desire to have government policy, or the authoritative allocation of values, move in a particular general or specific direction." We may, therefore, define an interest group as one which is organised to promote interest by concerning itself with government policy. Mere sharing of common interest by a group does not make it an interest group: it must try to turn government policy in its direction and share in the political process. When an interest group uses pressure of any kind, it becomes a pressure group. The two terms are, indeed, interchangeable. The difference between the interest and pressure groups is of degree, not of kind: the former lays emphasis on an interest or cause, while the latter on pressure or influence.

Lobby:

A lobby is a pressure group which works in a legislature to influence the legislators to make laws in the interest of the group. Thus a lobby consisting of men who, knowing all about the inner workings of the legislature, use means, fair or foul, to induce the legislators to use public treasury in the interest of its members. In the U.S.A., every important sector of the national economy has its lobby in the Congress. Thus there are farmers' lobby, the labour lobby, the railroad lobby, school lobbies, etc., etc. There are even one-man lobbies for some humanitarian activity, such as a lobby- against sale of narcotics, etc. In fact, there are hundreds of lobbies in the U.S. Congress of various types.

Cause Group:

A cause group is a pressure or interest group which seeks to promote some cause not of direct benefit to its members but of general benefit for all, e.g. the CND or the Greenpeace or the American Civil Liberties Union.

A faction is a pressure group which works in a political party. They are all sons of pressure groups. They may be one-man group or they may consist of several or many members. They may be loosely organised or are well-knit organisations. They work for private or group, interests. "Pressure in itself, obviously, is neither good nor bad. One can influence the government to his own financial benefit; but one can also influence the government to relieve famine in India". These groups originate in the felt needs and or share sympathies of some individuals which are of such interest to them as to become organised to influence government or any public body. Examples of pressure groups are too many to be enumerated: Trade unions, chambers of commerce, manufacturers, and bankers associations, farm organisations, business and professional societies, religious reform and racial group organisations of women, of war veterans, of the aged, etc.

How do the pressure groups work?

The pressure groups put pressure at the following institutions in order to further their interests or causes: (a) the legislature, (b) political parties, (c) the executive or administrative organs of the government, (d) the public at election times, and (e) the public at other times. Methods used by pressure groups vary according to the institutional structure of the State (unitary or federal, etc.), the nature of the party system (centralised or decentralised) and the political culture.

Pressure groups may be exclusive or partial groups. A pressure group is exclusive if it is only concerned to act in the political field to intervene with public authorities, e.g. the lobbies. A pressure group is a partial group if political pressure is only a part of its activities, while it has also other objects and means of action, e.g. a trade union, which is mainly concerned with the welfare of its members, and only acts politically in times of strikes, or the like.

Organization and working of the Pressure Groups.

The organization of each pressure group varies according to its interest, purpose and sphere of operation. Some consist of few members, while others of many. Some are well organised, while others are loosely so. But every pressure group tries to be well organised so as to influence the government and the public. It operates both openly as well as secretly and clandestinely. It endeavours to include in its public list of supporters and subscribers the names of as many public figures and prominent people as possible, both as members and as officers. Many of them are paid handsomely for associating with the group. The real work of the group is, however, done by a small number of paid officials and research workers, propagandists or lobby men and paid agents. They bring pressure or influence on the law-makers and government officials and bodies. The pressure may take the form of a friendly talk, a reasoned discussion, or threats of party action or failure in re-election or rewards and bribery, such as securing employment in the business concern of the group. The group also conducts campaigns of propaganda or education in order to manufacture public opinion. For this purpose, it collects as much of knowledge and information as possible by social survey, research work, etc. Letters, telegrams, and such other methods are used to impress upon the government that the public opinion is eager for something, which is of course the particular interest which the group seeks to promote. The pressure groups use the newspapers, radio, and television. They present petitions and pass resolutions at mass meetings. They send letters and telegrams to public officials, visit their offices and use every known method to publicise their programmes. They provide them with sufficient funds. Thus many governmental policies and laws in America are adopted by the Federal and State and local governments under the influence and pressure of these interest and pressure groups.

Nature of Pressure Polities.

Pressure in politics means an influence directed towards the attainment of certain ends which are limited and specific is not public or general. Pressure politics, therefore, is a skilful method of influencing the government by organised groups for the attainment of their special and limited interests and programmes. Methods employed may be open or secret, through public action or friendly and private contacts by the lobbyists. The aims, objectives and programmes of a pressure group are, however, not adopted by the whole of its members or of the public, but are decided upon by its officials and promoters. Everything is decided behind the screen, in great secrecy. Having adopted its programme, the group presents its proposals to the government in such a way as if they are for the good of all the people or the whole country. It always rationalizes its own interests to make them appear advantageous to the entire nation. It thus disguises its special interest under the garb of national interests. For example, in U.S.A., a protective tariff is pictured as a measure for developing infant industries and maintaining the American standard of life against the competition of the underpaid foreign labour. At the same time, it manufactures 'public opinion' and then insists that the officers of the government or law-makers must always obey the 'public opinion', which is, of course, largely created by the pressure group itself

Functions of the Pressure Groups:

Although political thinkers like Rousseau, Hegel, Green, and others are critical of the role of pressure groups in the State as divisive and particularistic, they perform important functions in the modern democracies.

Firstly, they provide information of a specialised and technical nature to the government, and administrators, which enable them to make laws and enforce them, or make policies and implement them. For this purpose, the representatives of the pressure groups appear before the legislative committees or administrators and their professional staff provide vital information to the legislature, or to the administrators.

Secondly, they act as intermediaries between the people and the government. They transmit and communicate ideas from the people to the government. They enable the people to participate in the activities of the government. They enable the government to ascertain the reactions of the people to the government policies. In between two elections they act as watchdogs over public policy and administration, at the time when the people can exercise little or no influence on the government. In this respect, pressure groups are more effective than the political parties.

Thirdly, they act as a check on political extremism. One group may demand one type of policy from the government, while another may oppose it.

Fourthly, the minority parties and communities, and such other small groups can influence government through their pressure or interest groups.

Pressure groups and government:

In the modern advanced countries, the pressure groups play an important role in the working of the government. As a matter of fact, some of the government activities are delegated to them. We shall give here below two examples of doing so.

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(i) **Consultation:** In many States, it is now an accepted principle that recognised interests should be consulted both in the making of the laws and implementation of the laws. For instance, in Great Britain, the Agricultural Acts of 1947 and 1957 have made consultation a statutory duty. The pressure groups also participate in economic planning and policy making. In Britain, the views of the Cotton Board, an interest group, have been accepted by the Government as being the views of the textile industry. The government thus avoids the awkward task of arbitrating between conflicting interests of the textile industry.

(ii) **Joint co-operation:** The pressure groups also co-operate with the government in implementing various policies. In Britain, for instance, the Trade Union Congress, a labour organisation, work together with the representatives of the management in the National Economic Development Council and on the Economic Development Committee established in various industries in 1964. There are also various joint advisory committees. In France also, the Commissariat du plan is staffed by experts, but representatives of the business firms and trade unions work with the government officials on various modernisation commissions.

Forms of Pressure:

It will be interesting to mention the various ways the pressure groups bring pressure on the government. Some of them are as under:

(a) Refusal of Co-operation with the government: Business groups may refuse to co-operate or to continue rendering assistance and advice to a government department. This technique was applied by the iron and steel industry in Great Britain against the nationalisation policy of the British Labour Party just after the World War II.

(b) Strike: Strikes are often resorted to by labour and professional associations consisting of members of the same trade, profession or enterprise for purposes of wage increase, etc.

(c) Electioneering: Pressure groups participate in elections by supporting candidates favourable to their interests.

(d) National publicity campaigns: Pressure groups often undertake nation-wide publicity campaigns in order to cultivate a favourable climate of opinion among the people for their aims and thereby bring pressure on the government. These campaigns may be organised by public relations firms, which specialise in public relationing. Moreover, public meetings are held to oppose a governmental policy.

(e) Formation of a political party: In multiple party countries, the pressure groups may form political parties of their own in order to put pressure on the government. This technique cannot be easily employed in the countries which have only two-party system.

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Effectiveness or the pressure groups:

The success or failure of the pressure groups in influencing the legislative and other policies and activities of the government depend upon the following factors:

(i) **Size:** First of all, large pressure groups are usually more successful in their purposes, for they possess greater financial resources. But too large groups fail in their programmes, for they may lack cohesiveness and be unable to utilise their potential of larger resources.

(ii) **Unity:** Another guarantee of success is the unity among the members of a pressure group: The greater the unity, the more a pressure group will be successful in its programmes. It means that its members should devote themselves loyally and wholeheartedly to its programmes. But as they are members of other groups also, they may not have time and energy to do so. This is particularly the case with very large groups: hence their large size becomes a source of weakness.

(iii) **Leadership:** Leadership is an essential factor in the success or failure of a pressure group. It provides energy and enterprise which will make the group successful or destroy it.

(iv) **Strength of the party system:** The success of the pressure groups very much depends upon the weakness of the party system. In Great Britain, where the two parties are highly well-knit and powerful, the pressure groups are not as effective as in the United States, where the parties are not so strongly organised. Moreover, in the multiple party system, as in France, these groups are also very influential.

(v) **Importance to the economy:** The effectiveness of the pressure groups depends on the extent to which they can convince the people that they can play important role in the national economy. Pressure groups are either ineffective or non-existent in the developing countries, because they cannot contribute much too national economy.

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Chapter 36

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Propaganda

Nothing will enable a citizen to understand politics, influence policies and participate in the formulation and expression of public opinion more than a proper understanding of the meanings and significance of propaganda in the modern State. A distinguishing feature of the modern State is the use, misuse and even abuse of propaganda. Propaganda is a technique of influencing public opinion. Public opinion influences the policy of the modern State, while propaganda influences the public opinion.

History of Propaganda:

Propaganda has always existed in human history. In the ages, it was conducted on person-to-person basis, by means of face-to-face talks or conversations and speeches. In modern times, however, it is conducted through the devices of high technology and the media of mass communications, such as press, radio, cinema, television and now even by the earth-girdling satellites. It is, indeed, stock-in-trade of the political parties, pressure groups and other opinion-makers and leaders as well as of the commercial publicity-men and advertisers.

The term "propaganda" was first used by the Roman Catholic Church in its war of words against the revolting Protestants. It established an organisation, called Congregatio de Propaganda Fide (Congregation for Propaganda of the Faith), which was a committee of the cardinals to carry on Christian missionary work. The term acquired a derogatory sense when the British, French and American Allies in their war against Imperial Germany during the First World War, used propaganda among German troops so skilfully as to bring about the defeat of Germany. The Germans during the inter-war years, led by the Nazi Party, asserted that Germany was not defeated on the fields of battle but by the "swindle" of the Allies propaganda. To counter such attempts, Nazi Germany set up a ministry of propaganda which was controlled by the notorious Nazi propagandist, Dr. Goebbels, the Propaganda Minister of the Nazi dictator, Hitler, who perfected a propaganda device, which he called 'big lie'. He claimed that the bigger the lie, the more readily the people believed it to be true.

Before modern political propaganda began, commercial propaganda in the form of publicity and advertisement had come into use after the industrials Revolution of the early nineteenth century. Modern large scale industry produce such an abundant quantities of goods that they can be sold only by means of large scale commercial publicity and advertisement, on which billions of dollars are spent every year in the industrialised countries of the world, e.g. USA, Japan and Western Europe. But here we are concerned only with the political propaganda, carried on by governments, political parties, leaders and others. The immense influence of propaganda was realised, for instance, by the Soviet leaders. They use it in two senses as "propaganda" and "agitator .1". By propaganda they mean the "reasoned use of historical and scientific arguments to indoctrinate the educated and the intelligent", while "agitation" means the use of emotional slogans, parables and half truths to influence the uneducated and the unreasonable. Accordingly, a standard Soviet manual is issued for teachers of sciences, entitled "For the Propagandist of Political Economy"-and a pocket-sized booklet called Bloknot Agitora (The Agitator's Notebook) is issued weekly to be used in speeches and conversation among the masses.

In present times, the technological revolution and the information explosion have made propaganda the most powerful political weapon of almost all the States and government, political parties, pressure groups, commercial enterprises and corporations, used both internally within the country and externally against other countries, governments, parties and groups. For this reason a ministry or department is established in many countries which is variously called ministry of propaganda, information, public relations or of public enlightenment.

Definition:

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Propaganda may be defined as a deliberate attempt to influence or manipulate other people's beliefs, attitudes or actions by means of words, gestures, flags, images, music, monuments, and such other signs and symbols. It is also understood in a negative sense. It refers to the management of mass communications, the manipulation of facts, the one-sided presentation or communication of information and the use of non-rational appeals. The propagandist has a specified goal or set of goals. To achieve these he deliberately presents a selection of facts, arguments, and explanation in such ways which he thinks will have the most effects. To maximise effects, he may omit relevant facts and withhold necessary information and thus mislead the people whose attention he wants to divert from everything but towards his own propaganda. Whether taken to be good or bad, propaganda appeals to emotions rather than to reason. It distorts facts in order to deceive people. It always aims at inciting the people who are the target of the propaganda are technically called audiences.

In modern times propaganda has become the chief factor in the process of manufacturing public opinion. It is defined as "the spreading of ideas which we want people to believe, whether such ideas are true or not." It is an effort to make a 'public opinion' favourable to a particular party or interest. It is an instrument of social control by forming opinion or ideas. It

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is the utilisation of words, objects or persons in an attempt to influence or control the opinion and actions of the individuals and groups. Propaganda is the psychological weapon in the hands of the political power (and if it is a commercial publicity the commercial interest or organisation).

Propaganda and Education.

Propaganda and education should be clearly distinguished, for they are likely to be confused. The aim of the educator is to convey facts and opinions of all sides in order to enlighten the learners. He seeks to enable them to think and perceive critically and then to make up their own minds on the particular issue. He presents all sides on an issue and leaves the learners to arrive freely at their own conclusions and opinions. The propagandist, on the contrary, conveys facts and opinions in such a way as to help the audience make up its mind. His aim is to teach the audience not how to think but what to think. Nevertheless, as both propaganda and education are forms of communication, it may not be easy to distinguish what is controversial and what is self-evident and true. Indeed, it is sometimes said that one man's "propaganda" may be another man's "education", and vice versa. For instance, Pakistani people regard "Muslim Period" of -Indian History as a fact, but the Bharati people are taught to regard it as controversial; and they have distorted it altogether. In other words, what is history to the Bharatis appears as propaganda to the Pakistanis, and what is history to the Pakistanis appears as propaganda to the Bharatis. Even a scientific theory can be regarded as propaganda by some people. For example, Einstein's theory of relativity, the basis of modern physics and space research, was declared by the Nazi Germans as Jewish propaganda.

The Process, Methods and Techniques of Propaganda Forms of Propaganda.

A person who change its opinion accordin to situation.

Propaganda is chameleon-like in its forms and shapes. It is carried on in innumerable ways, such as spoken words, printed words, slogans, symbols, personal contact, mass action, etc. Its means are also as numerous as its forms. They are: person-to-person conversation, meetings, parties, press, platform, radio, cinema, television, educational institutions, and the like.

In its simplest form, the propaganda process consists of three factors: the propagandist and his message, the strategy and techniques used, and the audience or the people or the groups of people who are exposed to the propaganda. The propagandist may be an individual or a group of individuals, an agency or institution with a message, interested in influencing the opinions, attitudes and behaviour of the people exposed to the propaganda. The strategy and techniques are the methods and means to achieve the aims and goals of propaganda. The people or groups exposed to propaganda may be the people in general or the electorate in the country in

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the case of internal propaganda, and the groups and peoples who are the targets of a foreign propaganda. In this chapter, we shall be mainly, though not exclusively, concerned with the internal forms and process of propaganda.

How is propaganda undertaken?

A successful propaganda campaign, like a military campaign, has its strategy or goals and its tactics and techniques.

Strategy:

Strategy is concerned with the overall campaign and its objectives or goals. In politics, it means two things. Firstly, it refers to the aims and policies of a political party, which are generally embodied in the party manifesto or party platform. Secondly, it refers to particular groups of people in the society to which the party appeals to gain support or the people in a foreign country to which the propagandist targets his propaganda. In the internal propaganda, the target group are the uncommitted voters, called "floating voters", whose votes would decide the election in the favour of the party which wins their votes by its propaganda campaign. In the external propaganda the aim is to so influence the other people as to incite them against their own government or leaders.

Tactics:

Tactics consist of the various methods and procedures which the party or the propagandist uses to accomplish the aims of the propaganda, It is the art of utilising all available forces to the best maximum advantage within the limits set by strategy. For this reason the political campaigner, or the propaganda, has to so devise his propaganda techniques as to win support for his party or to influence the target-people according to his purpose. As a tactician he has to decide which of a number of courses will best help him succeed in his task. In more concrete terms, it means that he has to decide beforehand upon the timing of the campaign, the extent of polemics in the campaign, the choice of the medium of communication and the method of presenting information.

The political campaigner and the foreign propagandist have to decide in advance which forms of propaganda they would employ and what techniques they would adopt in their propaganda campaign.

Its Techniques.

Like its forms and means, propaganda is conducted by various methods and techniques. The most common of them are: (i) publicity or the, publication of a point of view by an official body or person, or by official Statements, (ii) Censorship. It is the opposite of publicity, because it seeks to withhold news or information from the public. If publicity is an act of communication, censorship is that of omission. But one supplements the other. It is, indeed, impossible to make propaganda successfu

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censorship. In every propaganda campaign, therefore, not only much is told to the people but much is also not communicated or revealed to them. They are shown only one side of the picture-the bright side, if the aim is to elicit their support for a cause or interest, or the dark side, if the aim is to make them dislike and oppose something. Propaganda is always one-sided presentation of facts, news or information, (iii) Indoctrination. It means to present facts or impart knowledge about something, whether policy, or philosophy or belief, in a persistent and systematic manner before such persons who are incapable of critical resistance due to immature age, inexperience or lack of education. Indoctrination is most successful in the case of children and youth, for they are incapable of critical resistance or rejection due to their mental immaturity and inexperience. But they are at the same time very receptive of it because of their impressionable age, their credulity, imitation and suggestibility. Much can be poured into an empty head as it is an empty pot. (iv) Education is also a method of propaganda. Only it is more rational, unbiased, and less one-sided.

Principles of propaganda.

The techniques and methods of propaganda are based on these principles: viz., simplicity, repetition and credibility. Firstly, all propaganda must be simple, for the level of understanding of the people is very low and their time and interest in the subject-matter may be very limited. Secondly, it must be repeated over and over again. Effective propaganda must be limited to a very few points which should be repeated again and again in various forms and means, such as those of the printed and spoken words, symbols and slogans, the public meetings and private conversations, the radio and the cinema or the television and the press. 'Knowledge is the frui of repetition', said an Arab thinker in the middle Ages. It is still more true o propaganda. Public mind is proverbially short, but by constantly harping o an issue the people can be made to feel intensely and act as required. Lastly propaganda must rely upon the credulity of human mind. All individuals ar impressionable, imitative, suggestible and credulous. Every individual is no only born as a child but remains childlike throughout his or her life. Propaganda relies for its success on men's ignorance of the future, inabilit to grasp the present or to remember what happened in the past. A ma readily and easily understands a thing if it is told or shown in a dramatic an impressive manner and on a magnified scale. That is why atrocity storie big lies, glittering generalities and emotional appeals and excitations hav great influence and effect on the masses of the people. 'The bigger, th better" is an essential principle of propaganda, for anything told i exaggerated terms is easily believed by the people. An advertisement in bi and bold letters or an atrocity story told in blood-curdling words and i horrifying adjectives is very effective.

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Propaganda device.

Many devices used by the propagandist are based on the principles mentioned above. We enumerate here the most important of them: (i) The name-calling device. The propagandist first arouses the hatred and fears of the people by describing the supposed or real evils and unfavourable qualities in those groups, States, races, individuals or issues which he wants to condemn and thus appeals to the people's fears, hatreds and prejudices by this name-calling or mud-slinging method, (ii) The glittering generalities. On the other hand, the propagandist aims at winning love, respect and loyalty to his own cause, State, group or race by describing us qualities and advantages in such glittering and glowing words and adjectives as to arouse the people's emotions of love, generosity and brotherhood. For instance, he will often use such words and terms for his own party, cause or virtues, Christian civilisation or the superiority of the white race, "white man's burden" or civilising mission, (iii) The card-stacking device. The propagandist knows that some persons are critical of what he says in praise of his party or State and in condemnation of his opponents or their cause. He seeks to confuse such critical people by the device of stacking such facts as would evade the issue, while he would resort to falsehood, censorship, omitting and distorting facts, raising side-issues or new issues, and by under-emphasis or over-emphasis. Thus he confuses those who try to find out facts and know the real situation, (iv) The bandwagon device. Here the propagandist tries to tell the people that "everybody is doing it" and thus suggests to every individual that he should also do what others are doing. Imitative instincts of man are usually strong enough to make him conform to the common practice and example of other, (v) The plain-folk device. Here the propagandist endeavours to impress upon the people that those whom he is publicizing or praising are not uncommon or strange person but are just as plain as the common run of humanity. Thus he seeks to create confidence and we-feeling for the "great man" in the hearts of the common people (vi) The transfer device. Here the propagandist wins the confidence of the people by referring to some prominent, popular or respected person, fashion or movement. He endeavours to transfer the prestige or sanction of the person or thing to in his own programme or party or issue For instance, if he wants to sell a kind of soap, he will say that such and such film-star also uses it; if he wants the people to accept the policy of a political leader, he will say that it was also the policy of a political leader, was also the policy of the founder of the State who, of course, is much honoured by the people, (vii) The testimonial device is frequently used by the commercial propagandists who quote a widely-known person as saying that he uses a specific product, e.g., cigarettes or cosmetics. For example, film-stars are usually shown using a particular brand of soap or shoes etc. (viii) Righteousness. The trick of showing things in such a way that all

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'right-thinking' people should support their cause without further questioning (ix) Transfer. The trick of identifying causes with respectable symbols or institutions (culture, communal harmony and peace) to mask his real motives of war. (x) Selection. The trick of using selected facts which though true may together create a totally false impression, (xi) The big lie. To resort to mass propaganda with the belief that the receptiveness of the masses is limited and their understanding negligible, so that they readily fall a victim to the big lie.

Types of agents:

In certain conditions the propagandist cannot operate himself and has to rely on agents. For the success of his propaganda, he has to employ innocent-looking agents or "front" organisations, while he himself remains behind the scene of his operations. For this purpose, he should choose such agents who are acceptable or credible to the audience than he would be. The use of agents is very effective in such areas where the propagandist is not familiar with the language and customs of the target people or where cultural, religious and other attitudes would deny him a favourable hearing. For instance, the Hindu teachers, merchants and others became the agents of Indian propaganda in eastern wing of Pakistan at the behest of India In 1971. The same role was played by the • Hindu Tamils was in Sri Lanka, and thus they enabled India to enslave that island State. The same role is played by "front men" and "contact agents" or by "hidden persuaders" in modern propaganda. It is important for the propagandists to remain behind the scenes of their operations and to select intermediaries, front men, Trojan horses, and "dummy leaders", whom the target groups or people are more likely to listen or appreciate. Similarly, paying a native news commentator or lecturer in a foreign radio or television station or furnishing propaganda music to the foreign radio or television station may be more effective than one's own broadcasts or telecasts. In this respect, the propaganda by a broadcasting station, like the BBC, is very effective, because the listeners in other countries usually believe that it is "truthful".

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Various propaganda devices:

The use of familiar symbols and signs by the propagandist is very useful, especially those associated with parents, or parent substitutes such as uncles, aunts, schoolteachers, priests, political heroes, gods and goddesses, e.g. "the fatherland", "the mother country", "the Mother Church", "Bharat Mata" (Mother India"), "Uncle Sam" for the Americans, etc. In India, an actor, who used to play the roles of Hindu gods in the films, became so popular with the people that he was elected as the chief minister of a province in India. The leader and founder of Communist Vietnam was "Uncle Ho Chi Minh" to his people. Modern propagandists use various devices for their propaganda purposes, such as the use of music broadcasts, audio and video cassettes, films books, posters, handbills, etc. In

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Khomeini's revolution against the government of Raza Shah in 1979, the use of the cassettes, with the speeches of Khomeini and other revolutionary leaders recorded in them, played an important role. Indeed, the list of such devices is so long that it would fill many pages. They include newspapers, magazines, radio and television films, posters, speechmaking, whispering and rumour-mongering campaigns, flags, street names, monuments, commemorative coins and postage stamps, various kinds of scholarships, awards and prizes given by foreign countries, such as Fullbright or Soviet Friendship scholarship, various "peace" awards, and prizes, the composition of novels, plays, comic strips, poetry and music as well as such propaganda agencies as political parties, pressure groups, public relations firms, churches, temples, mosques, various propaganda organisations operating overtly or covertly, etc., etc. In this respect, the "reference groups" with which the individuals are familiar, or the "social relay points" which convey or amplify a propaganda message are highly useful.

Effects and importance of propaganda.

Whether one likes it or not, propaganda has become a great force in the modern world. Good or bad, every modern State, whether a dictatorship or a democracy, is actively carrying on propaganda campaigns both within its territories and outside against other States, especially against those which it regards as its present or prospective enemies. Propaganda has indeed, become a very powerful political weapon. It has great effect on public mind. It works slowly, but if persisted in and repeated enough, it invariably succeeds in attaining the objects that it sets to itself, the causes of its success are several. Firstly, every individual is intellectually deficient in one way or another: he cannot think rationally about all things. The propagandist offers him ready-made answers or solutions to many about which he knows nothing or understands little: either he has no knowledge and experience or interest in it or it is very complicated. Secondly, every person has bodily limitations that he cannot be everywhere and thus have first-hand information about every event or fact. He has, therefore, necessarily to depend upon others to supply information about it. But others may not be interested in providing him with true facts of the case due to their own party, class or political interests and considerations. Yet, in spite of him mental, intellectual or physical limitations, every individual is eager to know something about everything, especially about an event or occurrence. The propagandist has, in such circumstances, a great scope for plying his trade. So great is the effect and influence of propaganda that it has now become *a* great force in maintaining the unity, strength and stability of the modern State. Hence propaganda ministries and publicity or public relations departments have become essential parts of the present-day governmental structure. It must, however, be said that propaganda is not necessarily or always an evil. We may use it to disperse many false notions.

It is a very good method of educating the 'people. In any case, the fact is that it is ultimately the good and the truthful that ultimately wins. You can befool all the people' for some time, or befool some people all the time, but you cannot befool all the people all the time. In the along run, victory lies with truth, i.e., truthful propaganda only.

Causes of the success of propaganda:

The factors, which lead to the success of propaganda, are as follows:

1. ***Crisis and war situation:*** In times of crisis or war people are so much perturbed that they become victims to propaganda easily. Rumours become very effective in such situations. During such emergencies propagandists preaching extreme political opinions tend to command more public support than under more settled conditions. In a peaceful society where the people are economically satisfied, views cannot be so quickly changed by propaganda appeals.

2. ***Winning side:*** If a party has known large majority in an area, its appeals at the election time may be more effective than those of other parties. The same is true of an army reputed to be victorious. Nothing succeeds like success. It is true in war as also in election campaigns.

3. ***Existence of censorship:*** An autocratic government or dictatorship imposes various kinds of restrictions on freedom of expression of opinion by such methods as censorship on the newspapers, press and publication. It thus enjoys monopoly of propaganda. The same is true of a strong political party. Then the campaigns of such a party are likely to be more effective than if its messages were liable to be challenged by rival parties.

4. ***Marginal issues:*** The issues, which are of marginal than of critical importance to the people, are readily successful, for they will have little or no effect on the opinions of the people one way or the other. Similarly, if the views or programmes of rival leaders or parties are more or less similar, effective propaganda by one leader or party will tip the scales against the other.

5. ***High degree of accuracy:*** When messages have a high degree of accuracy, they will be more acceptable to the people than those which are based on a complete falsification of the existing State of affairs.

6. ***The appeal of specific groups:*** Some sections of the people are highly suggestible to high or extreme political views than other sections, because of their age, sex, social status, class, religion or race. These include the young, the poor, the minority groups and those of low status.

Measurement of propaganda effects:

Modern world is seething with rival propaganda and counterpropaganda campaigns. It is, therefore, sometimes difficult to find out what is true and what is not. Nevertheless, various methods can be applied to find out the effects of a particular propaganda campaign. They are briefly as under:

1. ***Content analysis:*** Content analysis means to study the contents of a propaganda campaign. For instance, the number of column inches of printed space or seconds and minutes of radio or television time that propaganda occupied can be tabulated, thus the trend or purpose of propaganda assessed. The symbol and themes it contained can be categorised in terms of expressed or implied demands for action of various types.

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2. ***Intensive interviews:*** Selected individuals among the audience or the target people can be intensively interviewed by specially trained interviewers. If this is not possible, as it is often the case with people under a dictator or an autocratic ruler, informed persons can be interviewed who have either personal experience of such governments or have special interest in them, such as refugees, expellees, exiles, or scholars who have specially studied conditions in such a State.

force someone to leave a spac

3. ***Extensive observations:*** A propaganda campaign can be extensively observed by specially trained people. Such persons are called participant observers, that is, those who directly participate in the activities of party or movement and thereby can personally observe the effects of its propaganda. Moreover, audience's size and composition of audiences on such campaigns can be indirectly observed. Where printed or telecommunication, media are used, their readership or listenership figures can also be obtained. If public meeting or demonstrations are involved, there may be observers' reports, such as those of the newspaper reporters, etc.

4. ***Experiments and panel interviews:*** Lastly, experiments on the reputed behaviour of the audiences can be conducted by comparing with similar or matched groups, which may be exposed to the same kind of propaganda and their reactions noted. However, such experiments may suffer from some drawbacks. The matched group may not be representative of the audiences. Moreover, exact conditions confronting the audience may not be reproducible. But if these drawbacks are kept in mind, experiments can give some accurate results. Anyway, these defects can be overcome by panel interviews. The panel interviews are conducted with small matched groups who are closely and intensively or repeatedly interviewed. Even then it should be remembered that the effects of a propaganda campaign cannot be accurately measured but only estimated. But even fairly accurate estimation can go far in understanding the effects of a propaganda campaign.

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Chapter 37

Political Parties and Leaders

Modern government is a representative government. It is, therefore, a party-based system of government. The number of parties in a State may be one, two or many. We shall now consider what a political party is, what are the historical origins of political parties, what are their features, factors, and their functions and the three types of political party systems.

Definition:

Wherever a group of persons seeks to acquire political power by collective action, there a political party comes into being. But something more is also needed. There should also be a political structure of the State which provides opportunities to various groups to pursue interests and advantage by capturing political power. We may define a political party as a group of persons, more or less organised, who hold the same or nearly the same opinion on issues confronting the State and who seek to obtain control of government by winning elections in order to realise their aims and interests Briefly, a party is primarily an electoral machine for gaining power with or without a philosophy or ideology of its own.

MacIver defines a political party as "an association organised in support of some principle of policy which by constitutional means it endeavours to make the determinant of government." Lord Bryce defines political parties "as organised bodies with voluntary membership, their concerted energy being employed in the pursuit of political power." Max Weber defines the political party as "a voluntary organisation of propaganda and agitation, seeking to acquire power in order to procure chances for its active militant adherents to realise objective aims, or personal advantages, or both."

A political party is made of five elements: members, principles, programme, leadership and governmental power But in the actual evolution of a party all these elements may not be present.

Historical evolution of parties:

For ages past, there were no political parties at all, for the monarchies and autocracies of the past did not provide opportunities for their growth. Yet there were cliques and factions which tried to influence the king or ruler so as to win favours for themselves or for their groups or classes. Political parties first came into being in England, when parliaments began to challenge the autocratic powers of their kings. There were then two parties, one in favour of the royal powers, which was called the Tory party: now called Conservative party, and the other which favoured parliamentary powers, called the Whig party, later called the Liberal party. In Great Britain, the party system has always remained two party system. But the evolution of the parties in other countries has been different, for it depends on their historical conditions, culture and political and constitutional structure. The first type of parties was of the brokerage type in the nineteenth century. They aimed at protecting the class interests of the landowning or industrial classes. The next stage in the evolution of parties was that of the cadre parties. A cadre party consisted of a small number of members who seek to protect national interests by capturing governmental powers. The last stage, which began during the twentieth century, was that of mass parties. A mass party is open to public membership regardless of class differences. In the eighteenth and nineteenth centuries, political parties came into being only in Europe and North America. But since the beginning of the twentieth century, political panics of various types have also come into existence in Asia and Africa, especially in those countries where democratic and electoral systems were introduced, or where struggles for national independence against the imperialist powers began. Although there are mass parties in some Asian and African countries, but they are not truly so, for they are dominated by tribal chiefs, as in Africa, or by caste groups, as for instance in India. In Pakistan, the Muslim League was a mass party under Quaid-e-Azam and Liaquat Ali Khan's leadership. Afterwards it degenerated into various factions. Later, the Pakistan People's Party became a mass party. There are, however, several parties in Pakistan, but none of them has become a mass party. The Jammat-e-Islami is a cadre party, with membership restricted to chosen few, while other parties are only factions or coteries of leaders and a handful of their supporters and activists. Many of them are of local, provincial or regional membership and interests, such as the POP. ANP, PNP, etc., etc. If general elections are held regularly, most of them will cease to exist. In short, the existence of political parties and of party systems depend upon the political structure, culture and constitutional system, which may or may not ensure opportunities to the people to organise political parties and to capture governmental power by means of elections for national or limited interests.

Characteristics of the political party:

From the definitions given above, and the conditions under which parties grow up, we can derive such essential features which every political party possesses. They are as under:

1. **Agreement on fundamental views and ideas.** A political party is a voluntary association of like-minded people. Men differ in their opinions. This is partly due to the differences of personal experience

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emotions, temperament, character and knowledge and partly due to the love of combat and the desire for victory. Family traditions and social status of an individual very much affect his thoughts and opinions. "Every boy or girl", said a political writer, "that is born into this world alive, is either a little Liberal or a little Conservative or else a little Socialist." Parties exist because men disagree. Laski says: "Parties are born of the natural contrast between those who cling to the old and those who embrace the new. Temperamental differences or imitative tendencies of men might give rise to parties" Men are also gregarious by nature, — birds of the same feather flock together. If they are to live in a political society, they adjust their differences with each other and agree on certain opinions. When like-minded persons agree on certain fundamental aims and ideals regarding political, economic and other matters, they associate or come together and thus form a party. Without this agreement on fundamental aims, purposes and principles, no political part is possible.

2. ***Organisation and leadership.*** Persons holding similar opinions and principles must be organised into a political unit, if they are to achieve their aims and ideals. In politics, no tangible achievement is possible without a proper organisation. Due to this reason, Dr. Leacock said that a political party is like a joint stock company. Organisation gives coherence, unity and strength to the party. "In union there is strength." It alone makes concerted action and achievement possible. This fact distinguishes a political party from a crowd or a mob. A political party is like a team on a large scale. It has a team spirit of cooperation and organisation. Men learn that they must line up with others in order to be effective in action. But parties differ in their organisation. Some are rigidly organised, while others are not so. In present times, however, the general tendency is towards rigid organisation, discipline and control. The organisation and discipline of a modern party make it a vast and complex apparatus. "Parties possess", writes Finer, "buildings and newspapers, printing presses and advertising experts, and slogans, heroes and martyrs, money and speakers, officials and prophets, feast days and fast days; like all religions, they disrupt families and produce heretics, and among their agencies of discipline and subordination are the novitiate and penance." In short, a political party is like an army, a fighting organisation out to conquer and capture political power. "Victory," says Dr. Finer "is the first law of politics". Hence the need for organisation and leadership without which success in political struggle is not possible.

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3. ***Constitutional Methods:*** Political party is said to be a building block of democracy. Although a fighting organisation, a political party, however, does not fight like an army with bombs and bullets. On the other hand, it fights in a peaceful manner and with constitutional methods. Ballots have taken the place of bullets in modern politics and heads are

counted and not broken. Compromise rather than unconditional surrender is the method of political decision. Public speeches, meetings and demonstrations, persuasion and propaganda and other means of influencing public opinion are employed by political parties to win votes in order to come to power. They appeal to the voters to vote one or the other of the parties into power. The principle of majority decides as to which of them will form the government. The ballot-box decides the fate of a political party and its claim to form the government. Revolutionary or violent methods are used by some parties. But such a situation arises only when a people are denied opportunities for self-government and the State system allows its party system to be misused or corrupted.

4. *Promotion of national interests:* A political party must aim at the promotion of national, not at sectarian, communal or class interests. This is its essential feature and its basic test. Burke has rightly defined a political party as "a body of men united for the purpose of promoting by their joint endeavours the national interests upon some particular principle on which they are all agreed." This is the essential feature distinguishing a political party from a faction, a coterie, a clique or a pressure group. While the party aims at the common good of the whole nation, these groups aim at the special interests or selfish ends of a group or a class or a section of the nation. As Dr. Herman Finer says, "Hardly a party anywhere exists only for a single narrow purpose Parties are varieties of multi-purpose associations, rising to some that have as their concern the totality of human existence." This ideal or common good is the real unifying force of a political party. "The special cohesive element", adds Dr. Finer, "of a political party which differentiates it from other groups and causes political parties to differ among themselves, is their dogma of the Good State, and their struggle for the power to realise its implications concretely in the institutions and behaviour of all." It is for this or ideal of common good that there exists, in a democracy, the whole paraphernalia of party organisation and apparatus, party discipline and control, and the struggle for political power. Yet some parties fall far below this supreme ideal.

Party distinguish from faction.

A faction is a loose united group of men who unite to achieve private or sectional interests as opposed to national interests. It may be a fraction of a party or a splinter group. A coterie or a clique is a still smaller group of persons, united together for their selfish end or private gain.

Political Party and Pressure Group Distinguished:

Pressure groups stand for the interest or well-being of a special group or class, while the panics stand for the general welfare or common good of the whole nation. Secondly, the pressure group concentrates on one or on a small group of issues, while the party advocates in general terms a

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large number of policies. Thirdly, the pressure group is interested in policies, the party in candidates. Fourthly, the party organises public opinion; it is a conglomerate of opinion, while the pressure group endeavours to make or manufacture a 'public opinion'. In this respect the pressure groups are serious rivals of political parties. Fifthly, the basic distinction between the two is that the political parties aim at the control of the government in order to achieve their programme and ideals, but the pressure groups do not seek to obtain control of the government. Unlike the parties, they are not willing to assume the responsibility for solving the problems of government. Pressure groups often operate within the framework of political parties. Sometimes a party may become so small and limited that it may be no more important than a faction or a pressure group. Finally, political parties are public organisations, operating among and before the people, but pressure groups often work behind the scenes and try to avoid public scrutiny. Secrecy is essential to pressure groups but not to the political parties. This fact makes the parties responsible to public opinion, but the pressure groups can operate-irresponsibly.

Kinds of Political Parties.

In general, there may be at least four types or kinds of political parties, for there can be at most four kinds of opinions, viz., the reactionary, the conservative, the moderate or liberal and the radical or revolutionary. (1) The Reactionary party consists of such people who wish to revert to the old order, whether it actually existed in the past or is only imaginary Jan Sangh and Hindu mahasabha in India, the Nazi Party in Germany, or the Fascist parties in Italy and Japan before the World War II are the examples of reactionary parties. (2) Conservative Party is like the reactionary one, but with one difference. While the reactionary party seeks to revert to an old order, the conservative party seeks to preserve the old order unchanged. The reactionary party seeks to revive old order which is long dead and gone, but the conservative party seeks to preserve the *status quo*. Reactionary parties usually exist in countries whose achievements and glories lie in the past, which they try to revive once again, while conservative parties usually exist in countries which are still great and prosperous and do not want further change in society or politics lest they lose their prosperity and greatness. The examples of conservative parties are innumerable, such as the British Conservative Party, both the Republican and Democratic parties in U.S.A., the Congress Party of India, etc. (3) Liberal or Moderate or Progressive parties are those which advocate social change, progress and freedom. (4) Radical or Revolutionary parties stand for radical changes and outright progress in social and political life and organisation. In present times, the number of such parties is fairly large, such as the socialist, communist and other extremist parties. It must, however, be noted that in practice it is not ... a clear-cut distinction between some parties. They

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sometimes shade into each other. A conservative party may not be much different from a reactionary, while a liberal party may be really conservative: and a radical party may be so only in name, as for example. The Radical Socialist Party in France is neither radical nor socialist but is really a moderate party of the Centre.

Since the great French Revolution (1789-99). It is also customary to describe political parties as the parties of the Right, the Centre of the Left. The reason was that the conservative and radical parties were accidentally so seated on the right and the left in the French National Assembly in 1789 during the great French Revolution. Those parties which are reactionary or conservative are now said to be the parties of the Right; while the radical or revolutionary parties are called the parties of the Left; and those which stand between these two extremes are called the parties of the Centre. Parties of the Left are sometimes called the Extremists for they advocate an extreme or revolutionary transformation of society and State, such as the revolutionary, socialist, or the communist party. Usually every political party includes several points of views; for unanimity or homogeneity of opinion never exists in a party. In such a case it may consist of two wings, the left and the right wing. For instance, the British Labour Party has two wings; its left wing is more socialistic than its right wing.

Basis of Political Parties.

Parties are formed for different purposes in different countries and ages. They may be formed on the basis of religion, economics, form of government, nationality, class interests or other general questions of vital interest to the State or people. Religious basis creates communal or religious parties which are usually reactionary, conservative and revivalist or fundamentalist. They are for example, the Hindu Mahasbha, the Akali Dul Party, etc., in India, the Jamaat-e-Islami, the Ahrar, and the JUI or JUP in Pakistan or the various Catholic and other Christian parties in several European countries. But religious basis is not a sound principle for political parties. It arouses hatred, divides the nation, obscures political issues and prevents a rational solution of political, social and economic problems of a nation. It is opposed to progress and development of human life and society Racial and national differences also create various parties, especially where racial and national minority groups exist. In the 19th century, parties existed to advocate different forms of government, such as the monarchist and the republican parties, one favouring a monarchical and the other a republican form of government. Class parties also sometimes exist, such as the party of the landlords or of the industrialists or of the workers. In present times, however, parties are usually organised on the basis of political and economic programmes and policies.

Three Theories of the Origin of Parties.

Political writers do not agree among themselves regarding the causes and forces which create political parties. Broadly speaking, three theories are offered to explain their origin. They are the theory of human nature, the theory of ideological motivation and the theory of economic or class conflicts.

(i) *The Theory of Human Nature.* According to this theory, parties arise because human nature is fundamentally split into two tendencies, conservatism and progressivism. Some people are instinctively conservative and want to leave things as they are. They dislike change and oppose progress. On the other hand, some persons are instinctively progressive and want to make changes, as they are dissatisfied with the status quo or the existing order of things. "These two tendencies of human nature produce two kinds of parties, the parties of the Right and those of the Left, the conservative and radical or progressive parties. This is psychological explanation of the rise of different political parties.

According to Lord Bryce, four factors maintain political parties. "Whatever its origin." he writes, 'every party lives and thrives by the concurrent action of four tendencies or forces, which may be described as those of Sympathy. Imitation, Competition and Pugnacity. Even if intellectual conviction had much to do with its creation, emotion has more to do with its vitality and combative power." These forces of human nature preserve the unity and continuity of a party.

As regards the changes in political parties, it is said human habits and temperament change with age and circumstance. Young people are always radical, emotional and idealistic. They love change and dislike the old order. But grown-up people with advancing years become conservative and dislike change. They look back to the old order with which they are habituated and are critical of progress and change, innovations and reforms. Thus most individuals begin as radicals and revolutionaries in their youthful days but become conservative as they become old and settled in life with an established social status, wealth and property. Thus age and circumstance change political views and party affiliations of the individuals.

(ii) ***Theory of Ideological Motivation.*** This theory briefly means that ideas move men that political parties arise and become organised because men differ in their beliefs, ideas, convictions and outlook on life or in their philosophy of life. In the past, religious beliefs and dogmas divided people into different parties, whereas in present days, political philosophies or 'isms' and social ideologies divide them. In backward and under-developed countries, religion still plays a great part in the growth and differences of political parties, while in industrially advanced and progressive countries, social and political ideologies create different parties. Thus a political party is an association of those persons who have similar

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ideals, beliefs and purposes which they seek to achieve by collective action and control of the government.

(iii) *Theory of Economic or Class Conflicts.* This theory emphasizes the economic factors and motives in the growth and differentiation of political parties. It explains that parties grow up and become divided as a result of the conflict of economic interests of various classes, sections and groups in the nation and society. Differences in wealth and possessions, in economic outlook of the people and economic conditions, are the vital forces behind the formation of political parties. The 'haves' form one party and the 'have-nots' another. Men of property and wealth do not like social or economic changes and, therefore, organise conservative political parties. The poorer and propertyless classes are eager for social and economic changes, for they have nothing to lose by change. They form radical parties. Karl Marx was the first great writer to show the determining influence of economic or material conditions on the political life of a people. People think as they live. Politics is, no doubt, not all economics, but it remains a mystery without it.

Conclusion.

Each of these theories contains a Clement of truth. Political parties are complex phenomena. One factor alone docs not produce them. Human nature, ideas and economic conditions all determine the growth of parties and their divisions into various forms and kinds.

Importance of Political Parties.

Political parties have always existed in all forms of governments and States. But some forms of government favour their growth and development more than the others. In absolutist and unconstitutional monarchies, for instance the parties were no more than cliques and coteries. In the direct democracies of antiquity they were really transient and unorganised collection of persons around a prominent leader or orator. It is only in modern representative democracy that they have fully developed into mass-organisations of leaders and followers, based on definite principles and programmes of public welfare and national interests. They are, indeed, indispensable for the working of a democratic government. It is rightly said that they are the building blocks of democracy. Without political parties, writes Macrver. "there can be no unified Statement of principle, no orderly evolution of policy, no regular resort to be constitutional device of parliamentary elections, nor, of course, any of the recognised institutions by means of which a party seeks to gain or maintain power." The rise of political parties was much criticised by old writers and Statesmen as undemocratic, for they came in between the people and the rulers. But, as Lowell says, "The conception of government by the whole people in any large nation is, of course, a chimera; for whenever the

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thwarting the action of the former. The party-out-of power views with alarm all the acts of its opponents. The legislature becomes a battle-field of party quarrels. In these quarrels, however, the interests of the nation are disregarded and even forgotten. It is, indeed, remarkable, says Dr. Finer, that a part of the parliamentary government, the opposition, should spend weeks and years to overthrow the government, in order to cater upon the government. It needs lot of self-restraint on the part of the people. In backward countries, not accustomed to such a political self-control, the party quarrels usually degenerate into a civil war, as the experience of several countries since the end of the World War II has demonstrated. This is the reason why the parliamentary form of government in such countries has been snuffed out and replaced by a sort of dictatorship

2. ***It leads to moral corruption.*** Party contests are waged not on principles but for capturing political offices. As Belloc said, party divisions are artificial and are only the fights for office. They are 'arranged' for capturing political power by befooling the people. Victory is the first law of party politics, no matter whether it is won by fair or by foul means. It engenders bitterness and strife, rancour and hatred, especially at the time of elections, when fighting and head-breaking may also occur. While the party leaders incite bitter feelings by their spiteful and undignified speeches, their followers frequently start brawls and quarrels among themselves.

Moreover, party system breeds favouritism, nepotism and other evil practices, such as the ill-famed "spoils system" in the U. S. A., by which posts and offices in the government were distributed among the supporters of the victorious party. Gilchrist says, parties suppress truth and spread falsehood in order to impress upon the electorate that the one is right and the other wrong. Perverted party propaganda chokes reason and strangulates thought. It arouses popular emotions and generates mass hysteria on artificially created issues. But the rise of mass hysteria or herd psychology is the death of democracy.

3. ***It is opposed to the spirit of democracy.*** Party system is based on party loyalty and party discipline which does not permit members of a party to express their opinion freely and independently. They have to toe the party line and abide by party decisions, made not by all but by a handful of leaders at the top of the party hierarchy. The unanimity of opinion in a party is artificial and injurious. It suppresses freedom of thought and speech without which democracy cannot exist. It encourages loyalty to the party at the expense of the loyalty to the State. It reduces politics to a tug-of-war between two parties, in which, as Dr. Leacock says, "each side remains in a State of wilful inconvincibility, with individual judgment frozen tight in the shape of the party mould." An independent citizen is regarded as a 'crank' and is excluded from politics and a share in the government while party members and voters are reduced to slavish

obedience to party behests. Anyone who does not obey is driven out of the party and even out of politics. This is contrary to the spirit of true democracy. On the contrary, it creates such tendencies as flattery, sycophancy, servility and the 'gift of the gab', while truth, justice and reason are thrown into the background.

4. *It encourages bossism, factionalism and political adventurism.* Party system gives an opportunity to self-seeking adventurers to exploit the masses for their evil designs and personal ends. If they find no political party, they set up one for their own purposes. This leads to the growth of many parties which divide the nation into factions and groups, as it has happened in Pakistan, India, etc. Party system fosters rule by the boss, the caucus or private cliques, "which arrange matters to suit themselves." One of the worst features of the party government is that the parties are in the hands of the richer and privileged classes who use them for their selfish ends and class interests. They are financed by the rich and they work for their interests. Hence they are not, as Burke defined them, "a body of men united for promoting by the joint endeavours the national interests upon some principle on which they are all agreed," but are in practice, as Pope defined them, "the madness of the many for the gain of the few." That is why Rousseau; believed that where parties existed, there would be no expression of the General Will.

Merits of the Party System.

History is no doubt full of mischief and evil caused by the Party System. Yet there is another side to the matter. Parties have also done much good and averted many evils, as explained here:

1. *It is essential for democracy.* Modern representative democracy, with its large size and great population, is unworkable without parties. They enable people, scattered all over the country, to agree upon some common principles and work together in support of them. Thus they help the people to express their will. The success of the representative government has mainly depended upon the energy, efficiency and enterprise of the party system. "The party system," writes MacIver, "was in particular the mechanism by which the Class-State of the past was transformed into the nation-State of today."

2. *It gives political education to the people.* Left to themselves, the people are an unorganised mass of conflicting opinions, with no interest in politics Political parties arouse the people's interest in politics. They define and clarify national issues to the people, especially at the time of elections. Each party offers them its own explanation and solution of national problems. Thus the people are presented with alternative solutions, views and programmes. When the people vote for or against the candidates of the various parties, they really vote for or against their views, policies and programmes. In this way the parties keep a nation

mind alive to national affairs and educate them. As MacIver says, they make articulate the inarticulate desires of the masses." Thus they are as Lowell puts it, "the brokers of ideas." "Without political parties," as Finer remarks, "an electorate would be either impotent or destructive by embarking on impossible policies that would only wreck the political machine."

3. *It makes representative government stable and responsible.* As we said above, before the rise of the party system, democracy was impossible and unworkable. Political parties not only offer alternative programmes but also alternative governments to the people. Without political parties, the only method of securing a change of government would be by revolution or coup d'etat, as it was in pre-democratic States. Under the party system, there is always an alternative or "shadow" government of the opposition party or parties. If the policy of the party-in-power is not approved by the people, they can change it constitutionally by voting it out of power and replacing it by the opposition party. As MacIver says, Party-rule "implies the alternation of power, as system of succession which gives each its opportunity." It regards "persuasion more desirable than compulsion, and the conflict of ideas more creative than the clash of arms."

The party government is responsible government. The government of the ruling party is subject to constant criticism by the opposition party which acts as a check on any tendency towards despotism and tyranny." Thus the party system checks the growth of executive despotism and makes the government responsible to the public opinion. It acts as a check on hasty and ill-considered acts and laws of the party in power, which knows that the opposition will expose its weaknesses and mistakes to the people and bring about its defeat at the polls. The opposition thus keeps the government on the right path.

4. *Under the party system, government becomes stable:* It produces harmony between various organs of the State. In the parliamentary government, the cabinet consists of the leading members of the majority party in the parliament and thus the legislative and the executive organs are linked by the party membership and discipline. In the presidential form of government, the party is the only link which brings harmony between the president and the legislature, which are otherwise quite separate and distinct. If they belong to the same party, the danger of deadlock is minimised.

5. *Party discipline brings harmony between the government and the people.* Although some critics deplore the fact that party discipline and adherence to party policy restricts the independence of the members to think and act as they like, yet it has some advantage also. It brings harmony between the laws and acts of the government and the

wishes of the people. The ministers get the laws passed by the legislature with the support of the majority they command in the legislature, elected by the people.

THE PARTY SYSTEMS

Broadly speaking three types of party system exist in the modern States. They are the two-party, the multiple-party and the one-party systems.

The Two-Party or the Bi-party System.

Normally the two party system consists of two major parties, which are nearly equal in membership, e.g., the Conservative and Labour parties in Britain. A few minor parties may also exist, but they have little or no influence on the politics of the country. Sometimes a third party may arise which may gradually oust one of the two earlier parties from the country's politics. Thus temporarily there may be three parties, but ultimately the two party system is restored. This happened in England, where during the nineteenth century, the two parties, the Liberal and Conservative, existed. Then the third party, the Labour, came into being. It gradually supplanted the Liberal party and finally in the general elections of 1945, the Liberal party vanished from Parliamentary scene, which is now dominated by the two parties, nearly Labour and Conservative parties. In the two party system, one of the two parties is in minority in the legislature. It assumes the function of criticism and opposition to the party in power, hence called the Opposition. However, in spite of the opposition, the differences between them are often very minor. Both are reluctant to take up new and untried issues, which are really espoused at first by the unimportant minor parties. Only when an issue or a programme becomes popular, then one of the two major parties adopts it as its own programme or platform. Organisation of both parties is rigid and close-knit.

Arguments for the Bi-party System.

As compared to the multiple party system, the Bi-party system has the following advantages:

1. ***Offers a clear-cut alternative to the voters.*** First of all, the Two-Party System is convenient to the voters. They are asked to choose between two parties with their clear-cut programmes. Therefore, the choice before the electors is very simple and clear. They can vote for one of the two parties. Thus they decide beforehand that it by giving more votes to one party should rule over them. In the Multiple Party system, they are confronted with several parties, and are lost in the welter of several parties and their confusing programmes. Their votes do not decide which of the parties would ultimately rule then, because this depends upon the coalition of the parties in the legislature. So the government formed under the dual

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suffrage is wide, parties are certain to exist and the control must really be in the hands of party that comprises a majority or a rough approximation to a majority of the people." Without political parties, there will be factions and cliques. The people will have no means of influencing the government except by appeals and petitions to the government to redress their personal or sectional grievances, as was the case under the kings and other absolute rulers. In fact, wherever there is government by discussion and public opinion, there must be political parties, for there can be no unanimity in public affairs. In dictatorship, however, political parties cannot exist in the same way as in a democracy. Dictatorship does not tolerate difference of opinion. Hence there is only one party in a dictatorship, the government party, which has the monopoly of political power and decision making.

Functions of Political Parties.

1. *They organise public opinion and formulate the general will.* The problems facing the modern State are many and complex. People have ordinarily all sorts of opinions and views about one and the same issue. The first function of political parties is to organise these myriads of opinions by educating the people. Every party selects those issues which are of fundamental importance or are likely to appeal to the voters. It then formulates its own views, policy and programme about it and popularises it among the voters by means of the press, platform and other means of propaganda. Thus it explains these problems to the people. At the same time other parties put before them their own views and policies and thus enable them to judge these issues by themselves. In this way they act, as Lowell puts it, as brokers of ideas. As Bryce says, they bring order out of chaos of opinions and views. If there were no political parties in the modern State, politics would be a sheer babble of tongues. A disorganised mass of people can neither formulate principles nor agree on policy. Thus political parties organise public opinion and express the will of the people or the General Will. By serving, as Gettel says, as the motive force in crystallising public opinion, they make democracy workable over large areas of the modern nation States.

2. *They select candidates for public offices.* The second function of political parties is to select candidates for election, to plan, organise and run election campaigns and to win them by winning majority of votes for their own candidates. This is their essential and very useful function in the modern democratic government. As elections are expensive affairs, and some candidates are too poor to bear them, the party defrays the election expenses of such candidates from the party funds, contributed by its members and supporters. Moreover, the voters cannot know the candidates or choose them. The parties select them and acquaint the voters with their qualifications and merits and thus convince the votes of the superiority of their own candidates over those of the rival parties. They are

ne launching pad or spring-boards for new leaders to capture governmental ower. They provide opportunities for leaders to come to power.

3. ***They endeavour to capture government by constitutional ethods.*** The primary aim of a political party is to obtain control of overnment. Hence political parties endeavour to capture governmental ower by peaceful and constitutional methods of winning elections. In nodern politics ballot has replaced bullets, and heads are counted, not roken. The party which wins majority in elections becomes the ruling arty. For this purpose the parties announce their party programmes on the ve of the general elections, select their candidates and launch election ampaigns and undertake nation-wide election campaigns. They spend huge ums to win elections. They dramatize politics and keep the nation olitically awake. The majority party becomes the party-in-power and puts its party programme and policy into practice. For this purpose, it makes new laws and amends or repeals the old ones which are not in harmony with its programme or policy.

4. ***They also criticise the Government.*** The party or parties which are returned in minority to the legislature, form the Opposition. It performs no less important and useful function than that of running the administration. The opposition parties keep the ruling party in check, point out its weaknesses, and prevent it from becoming despotic or negligent of national interests. They expose corruption and favouritism and scandals of the ruling party. The Opposition is, therefore, aptly described as the watchdog of the democracy.

5. ***They control their members in the legislature.*** Lastly, the political parties perform an important function of holding together their members in the legislature. This is particularly so in the parliamentary system, in which the majority party in the legislature also forms the cabinet. If it is to remain the ruling party and preserve its power, it must remain a majority party in the legislature. Hence the party organisation is strict and party discipline and solidarity rigid. The party is, therefore a unifying agency between the executive and legislative departments of government. In the presidential form of government, the parties bring about harmony between the executive and legislative organs of the State and make them a working whole.

Defects of the Party System.

1. ***It encourages disunity and disruption in the State.*** The main allegation against the political parties is that they disrupt national unity by dividing the people into two or more hostile camps. They create an atmosphere of bitterness in the country. "Even the best political party", says Lord Halifax, "is a conspiracy against the nation." Politics becomes an endless strife between the party-in-power and the party-in-opposition, a struggle between the 'Ins' and 'Outs', the latter misrepresenting and

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Notes

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The Cabinet, as an institution of politics and law was yet to evolve and take its shape. This made Walter Bagehot to remark in 1867. 'The most curious point about the cabinet is that so very little is known about it".

It was only after an extension of franchise and emergence of political parties in parliamentary elections that the cabinet took its present position of ruling the nation according to the mandate of people given at the time of an election.

"The English Constitution has made a circuit of the Globe and has become a common possession of civilized man".

G.B Adams

2- GENERAL FEATURES

De Tocqueville remarked that the English people had no constitution. This saying of a great political and constitutional expert is quoted very often, but only to be refuted. England has a constitution, although it is not written in a single document. The British Constitution is found in statutes, customs and conventions. De Tocqueville probably understood that a constitution meant only a written, precise and one comprehensive document. If that be really the definition of a comprehensive document. If that be really the definition of a constitution, the England has no constitution. A constitution means certain principles on which the Government in a state is organized and which determines the relation between the people and the government. England not only has its own constitution, but it has also provided inspiration and motif for a number of other constitutions in the world. England is the homeland of parliamentary democracy. Other countries have borrowed many of its institutions and principles. We in India have also provided for a parliamentary democracy on the model of the British Constitution.

Q.1 Discuss and analyze the salient features of the British Constitution.

Ans: The salient features of the British Constitution may be analyzed as follows--

1. Mostly Unwritten and Partly Written: By far the most important feature of the British Constitution is its unwritten character. There is no such thing as written, precise and compact document, which may be called the British Constitution. It was really this aspect of the British Constitution that led De Tocqueville to remark that England has no Constitution. The English Constitution has evolved through the ages, and is largely found in judicial decisions, customs and convention. Conventions are political usages which have developed during its working and have come to stay as a vital part of the Constitution. They are now deep-rooted in the political system of Great Britain. Though these conventions have not been enacted in a statute and thus have no legal sanctions behind them, yet the governments and the people scrupulously follow these. They have even replaced law. This is in contrast with the system in India, U.S.A., France, Switzerland, the USSR and other countries, which have precisely written constitutions in the form of proper legal document duly enacted by some Constituent Assembly especially elected by the people for the purpose of framing the constitution. The British Constitution does not consist of any such single legal document, as it was never passed by any Constituent Assembly as such. At the same time although the British Constitution is mostly based on conventions and traditions yet it contains certain regularly enacted laws as its part and parcel. There are a number of historic Charters and Statutes laying some of the fundamental principles of the British constitutional system such as Magna Carta (1215), the Petition of Rights (1628); the Bill of Rights (1689); the People's Representation Act (1918); the Equal Franchise Act (1928); the statute of Westminster (1931); the Parliamentary. Acts, of 1911 and 1949 and various other statutes concerning local government and organization.

carefully

2. A Specimen of Development and Continuity: The English Constitution is a child of evolution. It can be traced back to the remote past. It was never enacted in the form of laws by

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any constitution – framing body duly elected by English people at any stage of history. It has grown like an organism and developed from age to age. As Munro points out, "the British Constitution is not a completed thing but a process of growth. It is a child of wisdom and chance whose course has sometimes been guided by accident and sometimes by high design. England has essentially moved along on her constitutional pathway readjusting her institutions slowly and cautiously to the changing conditions of the time and mood of her people".

In the words of Ogg, "the political changes as a rule have been so gradual, defence to the tradition so habitual and the disposition to cling to accustomed names and forms even when the spirit had changed so deep rooted, that constitutional history of Britain displays a continuity hardly paralleled in any other land." As for example the ancient institution of Kingship with the same name and style still continues although in the long course of history of England, its spirit has entirely changed from absolute monarchy to constitutional. So is the case of every other political institution. Moreover, this evolution of British constitutional system has been peaceful and there have been no serious political or revolutions for bringing about a change.

3. Flexible: The British Constitution is a classic example of flexible constitution. It can be passed, amended and replaced by simple majority of Parliament since no distinction is made between a constitutional law and a ordinary law. Both are treated alike. The element of flexibility has lent the value of adaptability and adjustability to the British Constitution. This quality has enabled it to grow with the needs of time.

4. Unitary: The British Constitution has unitary character as opposed to a federal one. All powers of the government are vested in the British Parliament, which is a sovereign body. The Executive organs of state are subordinate to it and exercise delegated powers and are answerable to it. There is only one legislature. England, Scotland, Wales etc. are administrative units and not political autonomous units as in a Federation like those of U.S.A. or India.

5. Parliamentary Executive; England has a parliamentary form of government. The King who is sovereign has been deprived of all his powers and authority. The real functions are Ministers who are chosen representatives of the people. They belong to the majority party in Parliament and remain in office so long as they can retain its confidence. They are, so far as law is concerned, Ministers of the King and are summoned and dismissed at the royal discretion. But in actual practice, the choice of summoning the ministers is limited to the parliamentary majority party only, and no King dare dismiss his ministry so long as it enjoys the confidence of Parliament. Whenever they lose the confidence of Parliament, they must resign and give place to the party, which commands majority and therefore its confidence. No King can retain them in office at his pleasure. It is the pleasure of Parliament, which can keep a Ministry in saddle.

This relationship of Ministers and Parliament binds the executive and the legislature together and it is the most important feature of parliamentary government.

6. Sovereignty of Parliament: The Pattern of government in Britain is not onl parliamentary, but it also stipulates the sovereignty of Parliament. Legally, Parliament can make amend, and repeal any law whether ordinary or Constitutional. Its command is law and it is final Neither it requires ratification nor it subject to judicial review. No court in the country ca challenge the validity of laws passed by Parliament. The Executive is subordinate to it. This fac led De Lolme to remark; "The British Parliament can do anything but make a man a woman and woman a man." The position of the British Parliament is in sharp contrast to the position of th Indian Parliament or the American congress. The Constitutions of these countries define th powers of these legislatures and then their respective Supreme Courts may declare laws passed b them unconstitutional if the same go against the spirit of the constitution.

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7. Rule of Law: Another most important feature of the British Constitution is the Rule of law. It implies equality of all before law, its supremacy, uniformity and universality. It has three implications, viz.,

1. All persons are equal before law irrespective of their position or rank.
2. This doctrine emphasizes the supremacy of the law and not of any individual.
3. No one can be detained or imprisoned without a fair and proper trial by a competent court of law. Nor can a person be punished or deprived of his life, liberty or property except for a specific breach of law proved in an ordinary Court of Law by an ordinary procedure. A corollary to this principle is the doctrine that, "the King or Queen can do no wrong". That means that the King or Queen cannot be tried or punished by a court of law. It further implies that the ministers are legally responsible for the actions taken by them in the name of the sovereign. They cannot seek shelter in the legal immunity of the King or Queen.

8. Gap between theory and Practice: Unlike other constitutions there is a great gap between theory and practice in the English political system. This fact results largely from the unwritten character of the constitution, which is mainly based on conventions and customs. As for instance, in theory it is the King or Queen who is sovereign, but in practice it is the Parliament, which is sovereign. The King or Queen cannot veto any Bill passed by the Parliament, although he or she has the right to do so in theory. The Convention is that the King or Queen shall sign even his or her death warrant if passed by the two Houses of the Parliament. The King or Queen is only a figurehead. He or she must accept the advice of the Cabinet, which is responsible to the Parliament. The Queen in theory is the fountainhead of patronage but in practical all honours and titles are conferred by the Prime Minister. In theory the King or Queen has unlimited powers, but in practice he or she does little. A Cabinet Minster countersigns every action of the King or Queen. Prof. Munro rightly remarks, "The Queen retains the symbolism of absolute power although she has completely lost the substance of it. This also justifies the remarks of Lords Sankay that "Theory has no relation to realities in British Constitution.

9. Mixed Constitution: The British Constitution is a queer mixture of the monarchical, aristocratic and democratic principles. The institution of Kingship shows that there is Monarchy in England. The existence of House of Lords, the Upper House of the British Parliament gives an idea that England has an aristocratic type of government. The House of Commons, which is the lower and popular House of the Parliament, reflects actual working of a full-fledged democracy in this country. But all these diverse political elements have been beautifully welded together to produce the final effect of perfect representative democracy, in which the House of Commons exercise the ultimate supremacy. The House of Lords has ceased to be effective and the King or Queen has become a titular head only. Hence in the words of Ogg, 'the Government of U.K. is in ultimate theory monarchy, in form a constitutional and limited monarchy and in actual character a democratic republic.

10. Role of Convention: A necessary corollary to the unwritten character of the Constitution is that the Conventions play a vital role in the British political system. For example, while the Queen has the prerogative to refuse assent to a measure, passed by parliament, by convention, she cannot do so and the same has become a rigid principle of the constitution itself. By convention, again the Queen cannot go against the advice of the Cabinet, though in strict legal sense she can do so.

Likewise, there are dozens of conventions, which do not have any force of law yet they are scrupulously adhered to and constitute the very blood and flesh of the Constitution.

11. Independence of Judiciary: Independence of Judiciary in the British Constitutional system is highly commendable. Although the British Constitution is not based on the theory of

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strict separation of powers yet by convention and tradition, lot of independence has been allowed to the Judiciary. The British Judiciary is considered to be the most highly impartial, upright and unamenable to any political influence. It is rather on account of efficiency and impartiality of the Judiciary that all civil liberties of people are perfectly safe and the celebrated principle of Rule of Law prevails in its real and effective form.

12. Paradoxes and Anomalies: The British constitution is full of paradoxes and anomalies. In the first place, England is now a first rate democracy but hereditary political institutions like Kingship and the House of Lords still exist. It is a clear contradiction in terms. Democracy has no place for hereditary Kings or Queens or hereditary legislatures. It goes to the genius of the Britishers that even in such paradoxical situations, they have found a golden mean without disturbing their institutions and at the same time fitting them in a democratic structure. Moreover, the British constitution is not systematic and symmetrical in form. In the words of Bounty, "Britishers have simply left the different parts of their Constitution where the waves of history have deposited them". The Britishers have not worried themselves to correlate various pieces of the constitution and blend into a single whole and remove anomalies, which are so very apparent.

POINTS TO REMEMBER

The British Constitution is unwritten. It is a specimen of development and continuity. It has grown instead of being made. It is flexible in nature. It is Parliamentary in form. The Parliament is sovereign. The Rule of Law forms an important principle of the British Constitution. There is a gap between theory and practice. A vital role is played by the conventions.

Q.2. What are the sources of the British Constitution? Is it correct to say that the British Constitution does not exist? Is it "a child of accident and design"?

Ans: In every country of the world except Great Britain, Constitution means a body of legal rules, which prescribe the organization of government of that country and regulate relations between the individuals and the government. All such rules are embodied in one or several documents bearing either the same data or different dates. Such a document may have been drawn up either by a Constitution Assembly, specially converted for that purpose, or may be formulated by the Legislature or it may have been granted by the King through have proclamation. The Constitution, as such means a written, precise and systematic document containing the general principles under which the government functions. These principles constitute the constitutional law of the country and it is quite distinct from the ordinary law. All acknowledges its sanctity and it speaks of the supremacy of the Constitution. It is amended and altered by a procedure different from that required for amending the statutory law. If the statutory law is at variance with the letter and spirit of the Constitution, the same is held unconstitutional.

In this sense there is no document to which a student of the British Constitution may turn for reference. The English-men never drew out their political system in the shape of formal document. It is the child of chance and result of the necessities of the time and consequently remains undefined and uncodified. There are some enactments of Parliament, which form part of the British Constitution, but they do not bear the same date. They were made as and when they were needed. Such enactments remain scattered and constitute a very small portion of the British Constitution. The most important part of the British Constitution is the result of customs, usages and precedents and consequently it is unwritten in nature. Nor is there any law in Britain, which may be altered by a procedure different from the one required for altering the ordinary law. Both the constitutional law and the statutory law originate from the same source and undergo the same

ordinary law

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procedure in passing and amending them. There is the supremacy of Parliament rather that of the Constitution.

The British Constitution is not contained in any single written document. A representative body duly elected by the British people for the purpose never enacted it. It was never promulgated on a specific date in history. It consists of various elements lying scattered all over the British history. According to Lord Bryce it is "a mass of precedents carried in men's minds or recorded in writing, dicta of lawyers and statements, customs, usages, understandings and beliefs, a number of statutes mixed up with customs, and all covered with a parasitic growth of legal decisions and political habits." The sources of the Constitution are party written and partly unwritten. They may be broadly brought out as fellows:

1. Great Charters, Petitions and Statues: One of the main sources of the British Political System lies in great charters, petitions and statutes enacted at different times in the historical evolution of political institutions. The Magna Carta 1215,the Petition of Rights 1621, the Bill of Rights 1689, the Act of Settlement 1701 as modified by the Abdication Act 1936, the Act of Union with Scotland 1707, the Parliament Act 1911 as amended in 1949, the Government of Ireland Act 1920, the Ministers of Crown Act 1937, have been great landmarks in the evolution of the British Constitution. Through these measures the British secured their democratic rights and gradually left the Monarch absolutely helpless in the hands of a democratic Parliament. But all these form a very little portion of the body of the British Constitution. They do not, as Munro points out, make a comprehensive code. Most of them have been the results of the need of the hour and are of historical value only today. In addition of some of the majority statutes mentioned above, there have been various ordinary statutes, which have also contributed much to the growth of the British Constitution. These laws are not marked by much constitutional enthusiasm, but all the same they are very important. To this category belong the various parliamentary enactments extending the right to vote to the British people like the Reform Acts of 1832, 1867, 1884, 1918, 1928, 1948 and even in 2010.

2. Conventions: Another most important source of the British Constitution lies in its conventions. These conventions not a part of written law, nor can they be enforced through the courts. But the people obey them because they are helpful in the smooth working of the government. For example if the Queen refuses assent to a parliamentary enactment, she would perfectly be within her rights. But this would bring a constitutional crisis, and thus by convention she must not refuse assent to a Bill duly passed by parliament. Another fundamental Convention is that the cabinet resigns when it ceases to enjoy the confidence of the majority of the Parliament. By another Convention, the Prime Minister must belong to the House of Commons. There are many other Conventions, which form the very soul of the British Constitution.

3. Judicial Decisions:- The Judicial decisions form another source of the Constitution. The judges interpret all the statutes and charters etc., and lay down their scope and limitations. Some of these judicial decisions have established important constitutional rights of the people. For example independence of juries was firmly established by the judicial decision in the famous Bushel's case in 1670. To some extent the British judges develop the Constitution much in the same was as is done by the judiciary in federal Constitutions like that of India or the U.S.A.

4. The Common Law: Another source of the Constitution may be traced in the institution of Common Law. This law embodies principles not laid down by Parliament ordained by the monarch, but which have developed in England independent of both and slowly gained recognition throughout the realm. The common law developed out of customs and usages. The judges recognized some customs of the realm, applied them to individual cases and set precedents for decisions in later cases. As for example, in other countries the rights and liberties of the people are expressly guaranteed in the Constitutions in the form of fundamental rights, but in

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British Meaning:-

England they are guaranteed by the common law. For instance nobody can be denied his liberty except for the violation of law, proved in a court of law.

5. Commentaries of Eminent Jurists: Legal authorities and eminent jurists have written comments on Constitutional law of England. Although these comments are mere legal arguments, yet their opinions cannot be easily ignored since they throw a flood of light on the spirit in which a particular law should be interpreted. Arson's law and Customs of Constitution, May's Parliamentary Practice and Dicey's Law of Constitution are regarded to be authoritative comments on law and practice of English Constitution.

EXISTENCE OF THE BRITISH CONSTITUTION

It was De Tocqueville who remarked that English had no Constitution. He was led into this belief by the absence of any written document, which might be called the British Constitution. However, in practice this argument does not hold water. It is true that in England there has never been a written Constitution except for the short-lived experiments of the Cromwellian era.

But what makes a Constitution is not a formal document; but the actual observance of fundamental rules relating to the government of the country. As Bryce remarks such rules do exist in England in the form of a host of conventions, customs, usage and judicial decisions that have been generally recognized together with certain number of character and statutes. If we mean by the term constitution only a written constitution, with some definite and precise rules embodied in black and white, then of course, England does not possess a constitution. But if we mean by constitution a body of fundamental rules and usages, written or unwritten, accepted as the basis of the government then England certainly possesses a Constitution. The British Constitution is not to be found in a definite and precise document. It is as Munro points out, a complex amalgam of institutions. It is a compendium of charters, statutes, decisions, precedents, usages and traditions, some of them are definitely set down in writing but are changeable at any moment, while others are living only in the understanding of the people. British Constitution is not entirely unwritten. Substantial portions of it have been embodied in great Constitutional charters like Magna Carta, Bill of Rights, Act of Settlement, Act of Unions with Scotland and Ireland, through they sum up only a small portion of the total. We may also include all the Reform Acts and the Parliamentary Acts of 1911 etc. But these are conventions, which are the very centre and soul of the British Constitution, since major portion of the Constitution rests upon conventions rather than on laws.

With this understanding one would agree that Britain has a constitution much in the same manner as other countries have. Rather, the British Constitution is the oldest in the world and the British people are fully aware of its existence. Not only do they respect it but also guard it very zealously. De Tocqueville assertion, therefore, was based on a wrong assumption. What Tocqueville resented namely the absence of any written document is in reality the glory and strength of the British Constitution. The special virtue of the British Constitution is its extreme flexibility, which enables it to adapt itself to the changing times without any difficulty.

A CHILD OF ACCIDENT AND DESIGN

Any representative body never framed the British Constitution at a specific time in the history of Britain. It has grown and evolved during the course of centuries. It has, therefore, been aptly described as a child of accident and design. This estimate of the British Constitution is quite correct. Much of the growth of the Constitution is accidental It is the product of a slow process of growth whose course has been guided partly by design and partly by chance. It has not been framed or adopted by any constituent body consisting of British people's representatives, at any particular time. This is in contrast with the Constitution of India, U.S.A. and France, which are

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the result of deliberate efforts of their people. Also it was not ordained or enforced by any monarch. It has gradually evolved itself from the feudal days to suit the modern machine age.

Almost all-important political institutions in England like Bicameralism, Cabinet System, and Constitutional Monarchy were born out of chance and expediency. Even the office of Prime Minister grew up instead of being created. There are numerous instances like that. Strachey is thus justified in saying that the British Constitution is 'the child of wisdom and chance'.

POINTS TO REMEMBER

The sources of the constitution are charters, conventions, judicial decisions, common law and commentaries of eminent jurists. The British Constitution does not exist in real sense, as there is no set political system. The only thing is that the Constitution is largely unwritten. It has gradually evolved during the courses of centuries and as such is a child of accident and design. It was never framed or adapted by a body of people's representatives at anytime, nor did any monarch enforce it. It just grew up out of expediency and chance.

Q.3. What is meant by the phrase 'conventions of the constitution'? How do they different from laws? Give some examples from the British Constitution. How and why are they enforced?

Ans: Two sets of rules are required for the successful working of the constitution of a country. One type of rules is those, which are enforced by the courts of law and are known as conventions. Dicey makes a clear distinction between laws and conventions. The laws are rules made by a legislative authority, enforced by the executive and applied by the courts. Conventions, on the other hand, are neither made by any legislative authority nor enforced and applied by the executive and the judiciary. They are merely some understandings, habits and practices, which regulate the working and day-to-day activities of the government and fore an unwritten part of the Constitution. The distinction between law and convention is more formal than real. Laws are found in statute books while conventions are not. But the real difference between law and convention is that the former is written and latter is not. Another difference is that while the courts recognize laws, the conventions are not. As for example, if a law is violated, the offender is liable to legal action and court sentence. On the other land, if somebody violates a certain convention, he is not liable to be hauled up by the police, and punished by the courts. In fact the conventions have the sanction of public opinion.

Human nature is conservative and it always delights in following the experience of the past, making necessary adjustments to suit the new requirements. Rules once evolved and subsequently followed become customary and binding. All rules evolved in such a manner, followed and considered binding by the people in the matter of government are characterized by Dicey as the convections of the Constitution.

The line of demarcation between laws and conventions is however, very thin. A convention of today may become a law tomorrow. As for example, the office of Prime Minister owed its existence to a long established convention but it was given legal recognition with the passage of Ministers of Crown Act, 1937. The same Act legally recognized 'Party', 'Opposition' and the 'Leader of the Opposition'.

In England the importance of conventions cannot be exaggerated because the whole working of the Constitution rests upon them. The conventions secure continuous co-operation between the various organs of government. Conventions are necessary for the proper working of the Constitution. If the British Constitution is stripped of its conventions and displayed in its legal nakedness, it would be unrecognizable.

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A complete list of the conventions may not be given. The following, however, are some of the important conventions, which are recognized and acted upon.

(A) IN RELATION TO THE KING OR QUEEN

1. The King or Queen must summon the leader of the majority party in the House of Commons to form the government after the general elections are over. He is designated as Prime Minister. The Prime Minister is then given a free hand in the selection of his colleagues and formation of his ministry.
2. The King or Queen must accept the advice of cabinet whatever and whenever tendered.
3. The King or Queen must given his or her assent to a Bill passed by the two Houses of Parliament, even if it refers to death warrants of the King or Queen himself or herself.
4. On the resignation of a Ministry, the King or Queen has to summon the leader of the opposition to form an alternative Ministry.

(B) IN RELATION TO THE CABINET:

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1. The Cabinet holds office only as long as it retains the confidence of the majority in the House of Commons. The Cabinet must resign if it loses the confidence of the majority in the House. As an alternative, the Prime Minister of the defeated Ministry has the right to ask the King or Queen to dissolve the House. By way of another convention, the King or Queen must accede to such a request of the Prime Minister and must order fresh elections. If the defeated Ministry gains majority in the House again, it will continue in office and if it fails to win at the polls, it must resign before facing the new House. It cannot request the King or Queen to dissolve the House for the second time.
2. All the ministers are collectively responsible to the Parliament. Even if one minister is censured or defeated in the House, the whole ministry must resign en-bloc.
3. The cabinet cannot declare war or conclude peace without the approval of the House of Commons.
4. The Cabinet is an extra-legal committee of the legal executive called the Privy Council and exercises all the powers of that body in practice. All members of the Cabinet become automatically members of the Privy Council.
5. The Prime Minister of England must belong to the House of Commons. The conventions were established in 1922, when Lord Curzon was not chosen as Prime Minister because he belonged to the House of Lords.

(C) IN RELATION TO PARLIAMENT

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1. The Speaker of the House of Commons must keep himself aloof from party politics. He must behave as an impartial judge and should not commit to any political opinion inside or outside the House. He is to lead the life of political exile.
2. Once a Speaker always the Speaker' is another significant convention regarding the office of the Speaker. The Speaker of the outgoing House is returned unopposed from his constituency in parliamentary election. The House as Speaker then unanimously elects him. Thus he is allowed to continue as Speaker as long as he desires.
3. Parliament must meet at least once a year.

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4. The lay peers do not take part in the working of the House of Lords when it sits as the Highest Court of Appeal. Only Law Lords especially nominated to the House of Lords are to perform its judicial functions.
5. It is a matter of convention, that every Bill must have three readings before being finally voted upon in each House of Parliament.
6. Again there is a convention that a speech from government benches must be followed by a speech from the opposition.
7. Peers are appointed on the advice of the Prime Minister.
8. All Money Bills must originate in the House of Commons.
9. Her Majesty's Opposition, as a representative of the largest minority in the nation, has a rightful status to be upheld by parliamentary procedure.

SANCTION BEHIND CONVENTIONS

Conventions are political usages, which have grown in the course of the working of the Constitution. They have not been enacted both by the Parliament and hence have no physical sanction behind them as Law of the Parliament has. Yet these conventions are obeyed both by the people and the government. Prof. Dicey was of the opinion that these conventions are obeyed because their breach shall ultimately bring the offender in conflict with some established law and then it will entail legal punishment. As for instance, if the King does not summon Parliament for more than a year, serious consequences would follow. The Army Act would lapse; consequently the maintenance of armed forces will become illegal. The Finance Act will also lapse and the Cabinet shall not be legally entitled to raise taxes and spend money.

Prof. Dicey's view is only partially correct. Not all conventions are bound up with law. As Dr. Jennings has pointed out, the violations of every convention does not necessarily lead to, the breach of a law. For example, if the Cabinet refuses to resign when the House of Commons pass a vote of no confidence, no legal consequences will follow. Lowell while endorsing the opinion of Jennings points out that England is not obliged for ever to hold annual sessions of Parliament. Being a sovereign body, it can pass a permanent Army Act and grant taxes for a number of years.

Lowell points out that conventions are supported by something more than the mere realization that their violation may bring about breach of law. According to him, public opinion is the real sanction behind conventions of the Constitution. It is a convention that Parliament must be convened every year and that the Cabinet defeated in the House of Commons over a vital issue will resign or appeal to the electorate. If these things do not happen, there is bound to be resentment in the public. This fear of annoying the public compels the political party to obey the conventions. If the conventions were not obeyed, there would be numerous complications in the working of the government, which no statesman with any interest in the future of his party can for a moment over look. The conventions are rules of Constitutional morality and code of honour. They reflect the political needs of the people. Any deviation from the established conventions will terribly offend public opinion. No party or politician can forget that he is to face the people, in general elections. The fear of public opinion is therefore a positive check on the politicians in England to follow the conventions most scrupulously. The conventions are honoured in Britain because these are the motivating force of the Constitution. They have indeed oiled the wheels of democracy. These are, in fact, the most vital parts of the Constitution and have determined its growth and transformed absolute monarchy into a crowned republic.

POINTS TO REMEMBER

The conventions constitute a vital part of the British Constitution. These may be defined as those understandings, habits and practices, which regulate day-to-day working of the

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government. There are conventions relating to the King, the Parliament and the Cabinet. There is controversy among the constitutionalists as to why conventions are obeyed. Prof. Dicey is of the opinion that conventions are obeyed because their breach would bring about a clash which existing laws. But this is not a satisfactory explanation because breach of every convention does not necessarily bring about a clash with existing laws. But this is not a satisfactory explanation because breach of every convention does not necessarily bring about a conflict with some law. In the opinion of Lowell, public opinion is an effective sanction behind the conventions. No statesman with any interest in the future of his party can violate a convention.

Q.4. Discuss the nature of sovereignty of Parliament in England.

Ans: Sovereignty of the British Parliament is an important feature of the British Constitutional System. The struggle between the King and the Parliament was finally decided by the Glorious Revolution of 1688, which was further reinforced by the Act of Settlement. The British Parliament became a sovereign body. In its legal sense the Parliament consists of the House of Commons, House of Lords and the Monarch. Sovereignty of the Parliament means its supremacy. There is neither any other authority above it nor any authority above it nor any authority beyond its control.

Sovereignty of Parliament has two aspects positive and negative. Looked at from the positive angle, it means that there is no law, which the Parliament cannot make. It is competent to pass, amend and repeal both ordinary and constitutional laws. It is both a legislative body and constituent assembly. Parliament gained sovereign powers after a long struggle for supremacy with the kings at various stages of British History. The Parliament controls the Ministry. The latter remains in office as long as it retains confidence of Parliament. So Parliament is sovereign. The Parliament can also make laws regulating private rights and public rights. It controls army, executive and judiciary. It can make laws annulling a decision of a court of law. It can establish an absolute monarchy or a Communist society by an ordinary law. The laws passed by it, ordinary or constitutional, do not require any ratification. Its word is law and a final law. The Parliament can extend its own life; can legislate for abdication of a monarch or restoration of a king. In 1660, it restored Charles II to the throne; in 1936 it passed Abdication Act of Edward VIII. It passed septennial Act fixing its life at 7 years and then reduced it 5 years by an act passed in 1912. It can adjudge a minor of full age, naturalize an alien or legitimize a bastard. De Lolme has well said, …… "Parliament can do everything except making a woman a man and changing a man into a woman". When the Parliament legislates, the whole nation legislates. It personifies the British people.

The Parliament has not only passed Constitutional laws for Britain but for so many other countries of the Commonwealth.

Lastly, it may be noted that unlimited authority of Parliament regarding law making resides in Parliament alone and not in any executive organ. Executive in England does not enjoy the authority to issue decrees having the force of law unless the power is conferred upon the executive by Parliament itself.

Looked at from the negative angle, sovereignty of Parliament means that there is no authority in the country, which can question the legality of the laws, passed by the Parliament. There is no system of judicial review. The courts of England have no right to question the authority of the Parliament though they can interpret the law passed by it. The judges do not and cannot declare any parliamentary legislation invalid.

Dicey some up the unlimited authority of the Parliament as follows:

1. Firstly, there is no law touching the United Kingdom, which the parliamen cannot make.

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2. Secondly, there is no law already in force, which the Parliament cannot amend or repeal.
3. Thirdly, there is no constitutional law, which the Parliament cannot make, amend or repeal.
4. Fourthly, there is no judicial authority in the United Kingdom, which can set aside laws passed by the Parliament.

LIMITATIONS

Dicey's analysis is a legal truth, but what is legally true may be politically wrong. Dicey's conception of sovereignty of Parliament is therefore, subject to serious limitations.

1. Dicey and others belonging to the analytical school dealt with only legal aspect of sovereignty ignoring altogether hard facts and realities of life. Legally, the Parliament may make any kind of law but it cannot pass laws, which are against the established ode of morality. If the Parliament ever ventures such a legislation public opinion is sure to revolt against its authority. Nor will Englishmen tolerate such an action of the Parliamentarians: Even sovereignty of Parliament is the result of a long established custom and the same custom itself is a bar on the sovereignty of Parliament.
2. The Rule of Law and sovereignty of Parliament go together. Sovereignty of Parliament is tolerated in Britain because there is Rule of Law. Rule of Law establishes the equality of all before law and there is nothing arbitrary in Britain. If the Parliament passes a legislation, which violates the Rule of Law, it endangers its own supremacy. The principles involved in the Rule of Law are the result of the struggle of the people extending over centuries. So is the sovereignty of the Parliament. The liberties and freedoms of the people depend upon the Rule of Law as there is nothing like Fundamental Rights in Britain. Sovereignty of Parliament and the Rule of Law are, therefore, inter-connected and mutually inter-dependent.
3. Parliament is itself a fiction because it not an institution. Parliament consists of the King, the House of Lords and the House of Commons all the three parts join together to complete the actions of Parliament. Burt the competence of the House of Lords, with the passage of the Act of 1911 as amended in 1949. has become limited and if today the King and the House of Commons were to pass a law abolishing the House of Lords-within the requirements of the act there is nothing to obstruct. Therefore the conception of the sovereign power today, stands fundamentally changed. Under the present circumstances Parliament is the House of Commons and in the broader sense it means the majority party in the House of Commons, which, in its turn, is the Cabinet.
4. Though the Parliament may legally legislate for the Dominions, yet its powers are rigidly limited by certain conventions. There is a convention that any change touching the succession to the throne, the royalties of titles shall require the assent of Dominion legislatures apart from the Parliament of the United Kingdom. Again, no Law passed by the British Parliament can be applicable to any of the Dominions. This is a serious limitation on the sovereignty of the British Parliament now.
5. The jurisdiction of Parliament is further curtailed by the International Law. It is now a recognized principle of the British Constitution that International Law is a

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part of the Municipal Law of the land. Any legislation, which is likely to violate International law, is beyond the jurisdiction of the British Parliament.

6. Further, the Judge-made laws, the delegated legislation and a new form of administrative law, which are finding an important place in the British Constitution, are important limitations over the sovereignty of the parliament. There are not laws made by Parliament, yet they are as much part of the laws of the land and those made by Parliament.

As a matter of convention, no Parliament can pass a law, which is likely to affect the interest of trade unions, chambers of commerce and like without consulting these bodies.

8. No Parliament can make laws, which affect fundamentally the general policy of the State unless it has been an issue at General Elections. For example, the Parliamentary Act of 1911, which substantially curtailed the powers of the House of Lords, was passed after electing public opinion at General Elections.

Prof. Dicey himself feels that there are two kinds of limitations on the parliamentary sovereignty: one being external and the other being internal. Externally, Parliament is bound by the public opinion. It cannot pass any law or laws, which may enrage the masses. The fear of public revolt puts a definite limit to the powers of parliament. Internally, its sovereign power is bound by its nature. It shall pass only these measures, which are likely to be approved and liked by the members who compose the Parliament. Thus the internal limitations arise from the composition and character of the Parliament itself. Further one Parliament cannot bind the other. Every parliament is supreme and can amend or repeal all laws passed by its predecessors. This is, however, not a limitation but an incident of sovereignty.

It should be noted however, that the Parliament is supreme in theory alone. In actual practice, it has never been so supreme. The powers of the monarch have decreased but the powers of the Cabinet have steadily increased. The Cabinet backed by strong majority in the House of Commons controls all legislation. Parliament in practice does little more than register the wishes of the Cabinet.

POINTS TO REMEMBER

The Parliamentary sovereignty is an outstanding feature of the Constitution. It has two implications. Positively, Parliament can amend and repeal both ordinary and Constitutional laws. Negatively, no one in the reform can challenge the validity of the laws passed by the Parliament. Although legally Parliament is supreme in all respects, in practice it is not so. Its authority suffers from various limitations. The public opinion is an external limitation. The composition and character of Parliament is its internal limitation. International law is still another restriction. The Parliament by way of practice cannot pass legislation in respect of various public bodies like the Trade Unions. It cannot introduce a fundamental change in public policy without the consent of an electorate.

Q.5. The Rule of Law is an essential guarantee of the liberty of the English people'. Elucidate.

OR

Q. Discuss the nature of the Rule of Law in England. Are there any exceptions to it?

Ans: The Rule of Law is a unique feature of the British Constitution. Ordinarily it means that there is government of laws and not of men in England. Law is supreme over all. None can claim exemption from law. According to Dicey it has the following implication.

1. No one can be punished except for breach of law: Firstly, it means that 'no man is punishable, or can be lawfully made to suffer in body or goods, except for a district breach of

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law, established in the ordinary legal manner before the ordinary courts of the land." In simple words, it means that no citizen of Great Britain can be arrested, detained or imprisoned without a fair and proper trail in a court of law. The principle further implies that there should be an absence of arbitrary power in the hands of the executive. Cases are tried in open courts to which the public has free access. The accused has right of being defended by a council of his own choice and in all serious cases a jury must try him. No person should be deprived of his life, liberty and property arbitrarily. It establishes the supremacy or predominance of regular law as opposed to the influence of arbitrary power.

2. Equality before Law: Second implication of Rule of law lies in the fact that 'no person is above law and every person whatever his rank, or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of ordinary tribunals." In this sense, the government officials are bound to obey the ordinary laws, which govern the private citizens and are subject to the jurisdiction of the ordinary tribunals. This is in contrast to the system of the administrative law prevailing in France and other continental countries where dispute involving the government or its officials are beyond the ordinary courts and must be dealt with the special courts known as administrative courts. In England, such is not the case. "With us," says Dicey "every official, from the Prime Minister down to constable or a collector of taxes, is under the same responsibility for every act done without legal purification, as any other citizen."

This aspect of the Rule of Law is of great importance. As Maitland points out, it ensures ministerial responsibility in legal sense. The ministers are not only politically responsible to the Parliament, but they are also responsible before the ordinary courts of law. They can be sued or prosecuted for any illegal action taken by them in their official capacity.

3. Fundamental rights of the People are guaranteed by the ordinary law. In the third place, the Rule of Law implies that various rights of the people like the right to personal liberty, the right to public meeting etc., are in England a part of common law or the result of judicial decisions determining the right of private persons in particular cases brought before the courts. In other countries like India or USA these fundamental rights are embodied in their written constitutions. The judiciary is the zealous guardian of rights and liberties of the people. It is an interesting fact to note that in England people enjoy much more freedom than in any other country of the world although their rights have never been reduced to writing in any formal Constitutional document.

EXCEPTIONS TO THE RULE OF LAW

There are certain limitations, which the principle of the Rule of Law suffers from. These limitations may be brought out as follows.

1. The Crown is not liable for the wrong done by its officers. A government official is personally responsible for his mistakes made in his official capacity. But since the government cannot be held responsible. The wronged may go without an adequate compensation or relief because the wrongdoer may not have sufficient resources to pay the damages. In France where system of administered law prevails the wronged can secure proper relief from the government for damages done by its officials.
2. England is fast developing into a welfare state and the activities of the executive are extending to various fields such as education, public health, town-planning etc. As a result of extension of functions, it has become customary to entrust the executive authorities with judicial powers. As a consequence, the distinctions between the rule of Law and the Administrative Law, so sharply drawn by Dicey, are fading away. Thus the Roads Act 1920 authorities Minister of Transport to

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decide appeals about the refusal of licenses to run omnibuses. The Board of Education decides appeals about the opening of new schools. An appeal against an order of a Country Council lies with the Minister of Health. This is a kind of administrative law. Under it the administrative agencies exercise the jurisdiction of a judicial nature over the rights and property of citizens.

3. Judges cannot be held responsible for anything done by them in the official course of their business.

4. Foreign rulers and diplomatic representatives cannot be tried by any court in England for any wrong committed by them.

5. The servants of the Crown have practically no protection against the Crown even though they are dismissed without a just cause.

6. Till the passage of the Reform Act, 1947, peers could only be tried by peers, which was clearly a violation of the Rule of law.

The Crown alone has the power to grant or refuse passport to travel in any country and such orders cannot be challenged in a court of law.

8. The action of the Home Minister regarding naturalization of aliens cannot be challenged in a court of law. Likewise cancellation of citizenship cannot be challenged.

9. Trade Unions enjoy a lot of immunity from law.

10. It is essential that proceedings against a public official must be started within a period of six months from date of the cause of action regarding any excess, neglect or default of public authority. The right of action lapses after six months. Moreover, hearing penalty is to be paid if a citizen's lawsuit against an official of the Government fails. These facts discourage any action on the part of private citizens against a government official even if he has done a serious damage in his official capacity.

11. The King or Queen is not amenable to the jurisdiction of civil or criminal law.

In fact, today it is the 'Rule of law of Parliament.' It can pass any new laws and repeal old laws. It can establish administrative courts or restrain liberty of the people. It may order arrest and detention without judicial trial of any person and arm the government with wide discretionary powers as under the Emergency Act.

All these facts clearly indicate that the Rule of Law in England suffers from various limitations. Even Dicey himself admitted in 1915 and remarked that "the ancient veneration for the Rule of Law has suffered during the last 30 years a marked decline.' That might be so, but the rule of law is the rich heritage of the British people to the world. It remains the protector of democracy and human rights not only in Great Britain but also in other democracies of the world.

POINTS TO REMEMBER

The Rule of Law is an essential requisite of the British Constitution. According to Dicey, it has three implications. In the first place, it implies that no person in England can be arrested, detained and imprisoned without a fair and proper trial in a court of law. In the second place, it means that every person in England from the Prime Minister to a peon is amenable to the jurisdiction of ordinary courts administering the ordinary law. Lastly, rights and liberties of the people are inherent in ordinary laws of the land. The Rule of Law suffers from limitations as well. Under the Rule of law as enunciated above, a person wronged by a government official may not have adequate compensation. England is fast developing into a welfare state resulting in an extension in the functions of the executive. The various administrative organs are, therefore, entrusted with semi-judicial functions. Administrative law is automatically coming into existence. Rulers of foreign states and diplomatic representatives are not subject to the jurisdiction of the British Courts.

> *"There are many subtle distinctions in the vernacular of the British Government but none is more vital than the distinction between the King and the Crown".* **Gladstone**
>
> *"No monarchy in the world is more secure, or more respected by the people than ours."* **Herbert Morrison**

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3- THE MONARCHY – THE NOMINAL EXECUTIVE

Except for a decade of Puritan Commonwealth, the institution of monarchy has existed in England sine Roman times. During the past ten centuries, England had fifty-three monarchs. With the exception of five women, all have been men. The longest reign was that of Queen Victoria extending over sixty-four years and the shortest period of reign was that of Edward V who ruled for a few months in 1483. It was only for eleven years (1649 – 1660) that England remained without a monarch.

The British Monarchy is a hereditary institution, which is regulated according to laws of succession passed by Parliament from time to time. The succession to the throne in present time is regulated according to the Act of Settlement, 1701 as amended from time to time. The Act provided that the throne of England should pass over to the heirs of the princess Sophia of Hanover. Till 1914 the Royal Family was designated as the House of Hanover, but after that it passed on to the House of Windsor. According to a provision in the Act, only Protestants are eligible to succeed to the throne. Besides by usages the throne descends according to the principle of primogeniture, which means that the elder son is to be preferred to the younger. Male heirs are preferred to female heirs of the same degree. In case no direct heir to the throne is available.

Parliament would have to provide for a new dynasty by amending the rules of succession. The eldest son of the King, if any, is bestowed with the title of Prince of Wales. The Queen Elizabeth II succeeded to the throne after the death of her father King George VI, she being the eldest daughter, and they're being no male issue. There is a great distinction between a Queen who succeeds to the Crown in her own right and a Queen who gains her title by being the wife of a King. The former exercises the functions of the Crown but the latter does not.

The British Monarchs receive an annual grant from the national treasury. It is called Civil List. Parliament determines by law an annual Civil List to be paid from the national treasury for the maintenance of the Monarch and his family.

Q.6. State clearly what you understand by the term 'Crown' in the English Constitution. Bring out the distinction between the King and the Crown. Discuss in brief the powers of the Crown.

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Q. 'The King or Queen of England reigns but does not rule'. Examine the nature of British Monarchy in the light of the statement.

Ans: The Constitutional history of England begins with an absolute monarchy. The king h the supreme authority. He was the source of laws, head of executive authority and fountainhe of justice and honour. But with the growth of democratic ideas, the powers of the King a person began to be transferred to the Crown as an institution. By and by, he was reduced to t position of a nominal or constitutional head and his powers began to be exercised by the Crow which is a strange combination of the King, the Privy Council, Cabinet and Parliament to so extent. The distinction between the King and Crown is the distinction between the monarch a person and monarchy as an institution. The King is a person whereas the Crown is the name of institution. The King is a human being, is born gets crowned and ultimately dies. The Crown an institution is perpetual. The distinction is clear from the following oft-quoted maxim of t British Constitution. 'The King is dead, long live the King'. The word King used in the first p of the sentence refers to the King as a person and the same word used in the second part of t sentence refers to the Crown as an institution. This shows that the King as a person can die b Kingship or Crown as an institution cannot die. It is immortal. It is only an abstraction. In t words of Sydney Low it is only a myth. Begehot calls it, 'a convenient working hypothesis Munro regards the Crown as 'an artificial juristic persons'. Ogg defines the Crown as 'th supreme executive and policy framing agency which means practically a subtle combination King, Minister and to a degree Parliament'. This shows that the King is only a part of the Crow The King as an individual does not exercise the powers of the Crown; he exercises them on th advice of his ministers who are responsible to Parliament, which represents the people. A ministe must countersign every act of the King.

The distinction has arisen because of the peculiar manner in which the British peopl have fought against the powers of the King. They did not abolish monarchy but forced the King from time to time to surrender their powers and prerogatives and used them according to set rules Gradually, the Kings surrendered their powers to the Cabinet and Parliament. The monarchy ha been retained but it has been fitted in the Parliament. The monarchy has been retained but it ha been fitted in the framework of democracy. The Queen in Great Britain today is not a demi goddess but a nominal and constitutional head of a Parliamentary democracy. The laws an customs of the country bind her. No doubt, she wears the crown and enjoys great prestige but sh no powers. The powers once exercised by a monarch have now been transferred to the Crown a an institution. It is very strange that the distinction between the King and the Crown is only conventional. Law does not recognize it. In legal theory the King is still the source of all authority. This distinction between the King as a person and Kingship as an institution thus explains the gap between the theory and practice that exists in the British Constitution and which is one of its main characteristics.

POWERS OF THE CROWN

In the early days, the man or woman who wore the royal crown enjoyed all the powers and authority of government. As explained above by gradual process of democratization the powers instead of being used by the King or Queen in personal capacity began to be used by a body known as Crown, which is a combination of King or Queen, Cabinet, Privy Council and Parliament to some extent. The King or Queen is still there. He or she wears the royal cap on all ceremonial occasions. In strict legal sense, he or she still enjoys absolute power in the executive, legislative and judicial sphere. But these powers are a legal fiction, since the Crown as a separate political institution now exercises these in the name of the King or Queen. Although the Crown

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enjoys extensive and far-reaching powers, with the growth of a positive state in England, the powers of the Crown are progressively increasing. The powers may be grouped under the following heads.

EXECUTIVE

The Crown is the Chief executive head of the State. The whole administration is run in the name of His Majesty or Her Majesty. It looks to the enforcement of all national law. It makes appointments of all high officials of the government. It can dismiss them at will except the judges who can be removed only on the resolution of both the Houses of the Parliament. The King or Queen is the Supreme Commander of the armed forces. In this capacity, he or she makes all appointments in army, navy and air force. The Crown conducts the foreign relations of the country and deals with the dominions and other dependencies. It appoints and receives ambassadors, ministers, consuls and diplomatic representatives. It can declare war, conclude peace and make treaties with foreign powers.

LEGISLATIVE

The Crown summons, prorogues and dissolves the Parliament. The British Parliament consists of the King and the two houses of Parliament. All Bills passed by the Parliament are required to be approved by the King or queen though this assent has never been refused since the reign of Queen Anne. The Crown, of course, influences legislation through its power to appoint new peers in the House of Lords, although how this privilege of the Crown has little significance because the powers of the House of Lords have been drastically reduced and it cannot stand in the way of a legislation passed by the House of Commons. Every session of Parliament opens with a speech from the throne, which outlines the general policy and legislative programme of the government, although the cabinet outing its own policy prepares the speech. The King or Queen has thus to deliver the prepared speech even though he or she may differ from the same. It can issue ordinances in relation to Crown colonies. The legislative powers of the Crown are steadily increasing due to 'Delegated Legislation'. The Bills are passed by the Parliament in broad outlines and the crown through 'Orders-in-Council' thereof completes details.

JUDICIAL

The Crown is the fountain of justice. The whole judicial system operates in the name of the King or Queen. It appoints all the judges but it cannot dismiss them unless both Houses of Parliament present a joint address. It enjoys the powers of pardon, reprieve, and resolute and general amnesty.

ECCLESIASTICAL

The Crown is the head of the Church of England. It is the defender of the Faith. It makes appointments of archbishops, bishops and other church dignitaries. It summons church conventions.

MISCELLANEOUS

The Crown is the fountain of all honours. It confers titles and honours on such British subjects as distinguish themselves in different spheres of activity. It directly controls the colonies. It makes laws in the form of Orders-in-Council. The King has now no powers with regard to Dominions, as allegiance of the Dominions to the British Crown is absolutely ceremonial.

UNREALITY OF QUEEN'S OR KING'S POWERS

Though all the powers mentioned above are used in the name of the monarch yet these are powers of the Crown, which is a subtle combination of the King or Queen, the Privy Council, the Cabinet and to a degree the Parliament. The King as a person is only a part of the Crown. The Cabinet as a whole exercises some of these powers, some by the Prime Minister alone, some by individual ministers and some by the King on the advice of the Cabinet. It is very rare that the King can do anything on his own initiative and responsibility. The King himself is only a rubber stamp, which is affixed on orders issued by responsible ministers. For all practical purposes, his position is that of a harmless figurehead. He cannot even refuse to agree with the ministers if they were to present him his own death warrant to which Parliament has given approval. In the Honours List issued on the New Year Day or on his birthday, he may have to honour a man whom he not only does not know but also detests. As early as the times of Charles II, one of his countries after an evening party wrote on the door of the royal bedchamber the following words.

"Here lies our sovereign Lord the King.
Whose words no one relies on.
Who never says foolish thing.
Nor ever does a wise one.

This is still a correct estimate about the position of a British monarch. The King or Queen cannot do any wrong because they are not supposed to do anything on their own responsibility. In early days, the ministers were the counselors of the Kings. It was for them to advise and for the monarch to decide. Now the parts are almost reversed. The King or Queen is simply consulted but the ministers decide and act. All this proves that the King is merely a 'dignified appendage to a veiled republic and does nothing wroth the name." This fact also justifies the remarks that the Queen reigns but does not rule.

PERSONAL POWERS OF THE KING OR QUEEN

As said before the King or Queen is just the formal element in the exercise of these powers. The actual or potential element is the Crown. Yet, in the actual conduct of the Government, the King or Queen still personally performs certain specific functions. These may be described as the personal powers of the King or Queen. He or she receives foreign ambassadors in person. He or she gives assent to the election of the Speaker and Orders-in-Council cannot be passed except in the presence of the Monarch. Similarly, the appointment of the Lord Chancellor and the Secretaries of the State are the personal acts of the Monarch. The King may convene a Conference of Party Leaders, as was done by George V in 1914.

But the most important political act of the Sovereign is appointing the Prime Minister and commissioning him to form the government. Generally the choice is usually obvious and he summons the leader of the majority party in the House of Commons and asks him to form the government. But if no party commands a real majority or when a Prime Minister retires or when the majority party has not designated a leader, the Sovereign has a choice, although he is always careful to follow that course which is least likely to arouse criticism. The Queen appointed Sir Alec Douglas Home when Harold Macmillan resigned. Similarly, the King has the right to dissolve the Parliament without advice of the Prime Minister or refuse dissolution in exceptional cases.

Finally, the Sovereign is the fountain of honour as they are deemed to be the personal gift of the King. The principle is that in majority of cases the honour's are granted by the King or Queen on the advice of the minister but in rare cases he or she can exercise discretion as for example, the King or Queen himself decides the cases of the Order of the Merit, the Garter, and the Thistle as well as the Royal Victorian order.

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POINTS TO REMEMBER

There is a very subtle distinction between the King and the Crown. In the Middle Ages kings had absolute powers. But with the growth of democratic ideas powers of the King as a person have been transferred to the Crown as an institution. The King is only a part of the Crown as it consists of the King, the Privy Council, the Cabinet and the Parliament to some extent. The King is only a powerless part of the Crown. The Crown enjoys extensive powers in the executive, judicial, legislative, ecclesiastical and miscellaneous spheres. But these are not the powers of the King. The Cabinet, the Privy Council and Parliament mostly exercise these. The King is only a harmless figurehead. In earlier days, whereas the King acted and his ministers advised, now the ministers act and the King simply advises. There is thus a great justification in the remark that the King or Queen reigns but does not rule.

Q.7. If the Crown is no longer the motive power of the ship of the State, it is the spar on which the sail is bent and as such is not only useful but an essential part of the vessel. 'Discuss the importance of monarchy in the light of this statement.

OR

Q. 'One of the most remarkable phenomenon of modern political development has been the security of the British Kingship'. In the light of this statement explain why the institution of Kingship still persists in England.

Ans: To many foreigners brought up under republican atmosphere, the institution of monarchy appears to be a misfit, an anachronism, in modern democracy. They feel amazed at the survival of monarchy in the 'Mother Democracy' like that of England. Twentieth century has seen the fall of many monarchies in the world, when thousands of Kings have been disinherited. In our own country some five hundred Kings and princes have been dethroned and their States have been integrated with the rest of the country; so is the case in various other parts of world. Kingship is now regarded to be a hateful institution and nobody in this age of democracy likes it. But strangely enough the hold of the British monarchy over the British people is constantly increasing. It is true that the King is no more the absolute supreme authority. He has lost most of his powers to the Parliament and the Cabinet. He is left only with a shadow of his original powers. That is, in fact, one main reason why Kingship survives in England to this day. Whenever there is a Constitutional crisis, he exchanges, existence for powers. He always surrenders real powers.

The King has become merely a figurehead. The absolute monarchy of olden days has been transformed into a Crowned Republic. The Cabinet 'representing the people has become the working instrument of State. The King is no longer the directing force in the political and administrative machine of the British State. That is one reason why the monarchy survives in Britain. Among others, following are the reasons of its survival.

1. Conservatism: The British people are highly conservative people, not at all given to doing things in a radical or revolutionary manner. They are in favour of presenting and conserving ancient ideas and institutions with the modifications and reforms. Monarch is one of the oldest political institutions and British people on account of their conservative nature would not do away with it.

2. Lack of Republican Sentiment: The modern age has seen the fall of monarchies in the world. But the monarchy in England is becoming more and more popular because there is very little republican sentiment in England. The British people did not abolish the institution of monarchy when they could have done it easily. In 1689, King James II left the throne of England and fled away to France. The British people had a golden opportunity to establish republican form

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of government but this was not done. Instead they called upon William of Orange and his wife Mary to occupy the vacant throne. Only once in the history of England the republican government was established under Cromwell from 1649 to 1660. But that too was replaced by monarchy. Even at present, there is very little opposition to this institution. Except the Communists, no section of British public wants to abolish the institution of monarchy, not even the Labour Party that highly criticizes the aristocratic House of Lords.

3. Symbol of Commonwealth Unity: The inherent conservatism of British people would not have saved this institution from destruction, had it not been useful to the nation in many other ways. The King has proved to be a symbol of unity and has thus kept bound together the various peoples with different religious, economic and political development and social systems. Abolition of monarchy will involve the dissolution of the British Empire.

Now the monarch is the symbol of Commonwealth unity. The Commonwealth declaration of 1949 recognized the King as the symbol of the free association of the independent member nations of the Commonwealth nations of the Commonwealth and as such the head of Commonwealth. He or she is the golden chain, which binds the Commonwealth nations together. The Commonwealth countries are sovereign states. The Queen is a symbolic head of the organization. It gives a sense of superiority to the British nation, though legally she enjoys no superior status to that of the head of other member states. It is difficult to believe that in case England were to transform herself into a Republic with an elected President, the people in the Commonwealth countries would recognize him and would owe the same allegiance as they owe to a non-partisan King or queen of royal blood. These countries may claim chairmanship of the Commonwealth by rotation. Removal of Kingship would involve many difficulties in the relations of the UK with fellow members of the Commonwealth. They would then, elect their own independent heads of State. The Common racial allegiance between Britain and the Dominions that the Queen provides would be lost and it will lead to fissiparous tendencies in their economic and political relations too.

4. He is Mediator in Politics: He is a mediator who reconciles the conflicting and hostile planks of different political parties. Since he belongs to no party, his sole object is the welfare and the solidarity of the nation, and so his advice is considered valuable and is generally accepted. History abounds in examples when monarch had reconciled the difference of the political leaders and brought them together on the national front.

5. Titular Head of Parliamentary Government: England is having a parliamentary form of government, which presupposes the existence of a chief executive with nominal powers. If the British were to abolish monarchy, they would require a certain constitutional head of the State, the only alternative is an elected President with a definite term as is the case in India and France. But this would not be a change for the better. The elected President can be either strong or titular. If a strong President is appointed it will subvert the parliamentary system. If a weak and titular President is preferred, the King already is. Why to make the change? The King is non-political titular head but it would not be possible in case there were an elected President. Moreover, permanent tenure of the King or Queen brings about stability in the government. "Being the legal executive head of the State, all authority temporarily reverts to him when a Ministry resigns. During the brief interval of the resignation of one Prime Minister and the appointment of the other, he is the sole repository of powers and, being a person who stands aloof, from party strives, he can be depended upon for honesty and impartiality in his acts. He is the umpire who sees that the game of politics is played according to the rules." Moreover, monarchy provides a useful focus for patriotism. In the words of Earl of Belfour he is not the leader of a party, nor the representative of class, he is the chief of a nation. He is everybody's

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King. He is thus a useful focus for patriotism. As Jennings points out, "British people can damn the government but cheer the King. They are always loyal to the King even though they oppose the government". 'Royalty' according to Bagehot, "is a government in which the attention of the nation is concentrated on one person doing interesting things, but a Republic is a government in which that attention is divided between many, who are all doing uninteresting things." Thus the King as the head of parliamentary democracy as it exists in England is decidedly preferable to a President as the head of the State.

6. Head of Social Life: The King is the head of social life in England. He is the leader of the British nobility and gentry. The social and moral standards set by the royal family become a sort of ethical code for the English nation. All styles and fashions in British society emanate from the Royalty. "In an age of lightning change, King or Queen lends a comfortable, even if merely psychological, sense of anchorage and stability. With the King or Queen in Buckingham Palace, the people sleep more quietly in their beds." People lay down their lives to the call of the monarch, in any type of crisis. The royal family keeps the imagination of the people tied to what they are doing in the field of non-governmental functions. Many movements for improving the conditions of the masses have been patronized by the royal family. The members of the royal family inspire many schemes for providing better housing, medical aid and relief in distress.

7. Influence in Politics: No doubt, the king has lost all his powers, but he is not without influence. He has the right, in the words of Bagehot, to be consulted, to encourage and to warn. There are instances in the history of England when monarchs rendered signal service to the nation by giving proper encouragement and timely warning to their ministers. The letters of Queen Victoria make it abundantly clear that she was an active agent in the conduct of government. She played a considerable part in the selection of her ministers. She secured the appointment of the one and prevented the appointment of the other. Her son, Edward VII, had also a powerful influence. Similarly, George V is believed to have played a notable part during Irish crisis of 1911-14. The visit of George VI to France and USA in 1939, went a long way in strengthening the bonds of friendship with these countries. The degree of influence, which a British monarch wields, depends upon the personality of the monarch. Anyway, there is no denying the fact that British monarchs have rendered valuable service to the British people.

8. Royal Connections: Till the Second World War, the reason for maintenance of monarchy lies in the fact that it is not a very expensive affair. Queen Elizabeth's Civil List is about $470,000 besides $240,000 paid to the members of the royal family. Decidedly it is not much. It is only about 1% of the total revenues of England. An elected President too cannot be paid less than that.

The popularity of the institution of monarchy and the role, which it plays, is an undisputed fact. According to Anthony H Birch the existence of royal prerogative gives the British government a substantial degree of independence of parliament in some fields as well as the institution of monarchy provides a symbol of unity and identity of the nation. Thus although there have been moves to end or mend the House of Lords, even to reform the House of Commons and the cabinet but monarchy has stood the test of time. People appreciate and realise the unifying, dignify and stabilizing influence of monarchy. They do not want to have an elected person as head of the state, which is a commoner without any hallow around his personality. There appears to be full justification in the remark that the Crown is no longer the motive power of the ship of the State it is the spar on which the sail is bent and as such is not only useful but also an essential part of the vessel and this is why that despite its anachronism in democracy, the British monarchy is becoming more and more popular. As Ogg, points out the country will and should continue as how a 'Crowned Republic'.

POINTS TO REMEMBER

The existence of British monarchy is justified on the following grounds.

(a) *The British are inherently conservative and would not end monarchy, which is an ancient institution.*

(b) *There is complete absence of any republican sentiment among the English people. They had two chances once in 1649 and then in 1689, but they did not avail of them.*

(c) *The monarchy, in England, has proved to be a symbol of Imperial and Commonwealth unity.*

(d) *England has a parliamentary democracy, which necessitates the existence of a titular head. The monarch is the most suitable non-partisan executive head.*

(e) *The King or Queen is the leader of the social life of English gentry and nobility.*

(f) *The Kings exercise and have exercised a notable influence in politics. Like umpires they see that the game of politics is played according to the rule of the game.*

(g) *Its royal connections are an asset.*

(h) *It is not costly. The institution of monarchy is becoming rather more popular than before.*

Q.8. Discuss the proposition that the King can do no wrong.

Ans: The statement that the King can do no wrong illustrates the actual position of the King or Queen in the English Constitution. It means that the King can do nothing, right or wrong, of a discretionary nature and having legal effect. The proposition has the following two implications.

(a) The King is not responsible to any court of law in the country for any act of omission and commission. The fact of the matter is that the King or Queen does not take any action or make any political or governmental decision on their own initiative and responsibility. They invariably act on the advice of their ministers. Naturally responsibility of any wrong or illegal action does not and cannot fall on them. He is above the law of the land and cannot be arrested and tried in any courts of law for any time committed by him. This is a special privilege of the King.

(b) Since the King can do no wrong, it follows that he cannot authorize a person to do any wrong. No one can plead the authority of the King in defence of an illegal act done by him. The Danby case of 1679 established this fact clearly. Danby as Foreign Minister had some secret deal with France without any consultation with his colleagues in the Cabinet. Danby was accused of indulging in an anti-State activity but he pleaded innocence on the ground that all that he did was done under the instructions of the King. In his opinion, the King and not he should have been held guilty. The courts refuted this opinion of his and he was impeached by the Parliament for his crime. The Danby case unmistakably established the truth that ministers alone are responsible for their actions taken in the name of the King or Queen. As a result of this convention, a minister who is politically responsible to the Parliament and legally responsible to the courts of law in the country countersigns all acts in the name of the King or Queen. In no

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case a minister can seek justification of his illegal action in the fact that action was taken by him in the name of the King. Thus the doctrine of ministerial responsibility, which is the bedrock of British Parliamentary system, is the logical outcome of this constitutional maxim. It has reduced the King to merely a figurehead and deposited all real powers in the Cabinet.

POINTS TO REMEMBER

, The statement that the King can do no wrong is an important maxim of the English Constitution. It has a double implication. In the first place, it means that the King or Queen cannot be used in any court of law for any illegal action. In the second place, it implies that every action of the King or even is to be countersigned by some minister. No minister can seek shelter in the legal immunity of the King.

PROBABLE QUESTIONS OF (CSS, L.LB - I)

1. "If the Crown is no longer the motive power of the ship of the State, it is the spar upon which the sail is bent and as such it is not only useful but an essential part in the vessel also."

(Lowell) Elucidate

2. "The Government of the United Kingdom is in ultimate theory an absolute monarchy, inform a limited monarchy and in actual character a democratic republic." **(Ogg) Discuss**

"The British Cabinet is the most curious formation in the political world of modern times. **Gladstone**

"It is easier to know what the cabinet was than what it is now." **Colin Seymour-ure**

"On the performance of the twenty-two men and women round the cabinet depends directly the security and well-being of 56 millions people in the United Kingdom."

Peter Hennessy

4- CABINET – THE REAL EXECUTIVE

The Cabinet is the real as distinguished from the nominal executive in Britain. Though every action of the government is taken in the name of the King yet real and effective the Cabinet exercises powers. The Cabinet has been aptly described as "the steering wheel of the State".

The Cabinet must be distinguished from the Privy Council and the Ministry. The Privy Council is a defunct body consisting of 359 members. All Cabinet Ministers are the members of the Privy Council because till recently law did not recognize the Cabinet. Hence no one is ever officially appointed as Cabinet Minister. He is appointed a Privy Councillor and then summoned to Cabinet meeting. The Privy Council is thus a bigger body and the Cabinet is a small body of ministers who take all decisions regarding the policy of the government. The work of the Privy Council is mainly of formal character. The meetings of the Privy Council as a whole are convened only when there is the Coronation of the King or Queen or some other solemn ceremony is to be performed. Ordinarily 4 or 5 Cabinet Ministers (who are also Privy Councilors) meet at Buckingham Palace and act in the name of the Privy Council.

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A distinction is also made between Cabinet and Ministry. The Ministry is a body, which includes all the Cabinet Ministers. The Ministry consists of all Ministers who are members of either House of Parliament and are responsible to it for their policies. They hold office so long as they enjoy the confidence of the majority in the House of Commons. The Cabinet is a smaller body consisting of important ministers selected by the Prime Minister. There are more than sixty ministers in the Ministry but only about sixteen to twenty-five Ministers enjoy Cabinet rank. The Ministry does not meet as a body for the transaction of governmental business. It has no collective function. It is only the Cabinet, which meets as a body and formulates the policies of the government. A minister is only the head of a certain department and is not concerned with the determination of the government policy. All the decisions taken by a Cabinet are communicated to the ministers. The following ministers are invariably taken in the Cabinet - the First Lord of Treasury, who is the Prime Minister himself, the Chancellor of Exchequer, the Minister of Defence, the Secretary of State for Foreign Office, the Secretary of Sate for Home Office, the Secretary of State for Commonwealth Relations, the Secretary of State for Colonial Office, the Lord President of the Council and the Lord Privy Seal.

Q.9. Trace the Growth of Cabinet System in England.

Ans: Laski says, "The Cabinet is essentially a committee of that party or Coalition of parties which can command a minority in the House of Commons." In England, every act of the State is done in the name of the Crown. But the Crown is the nominal executive only. The real executive is the Cabinet. On Cabinet's shoulders rests the responsibility of carrying on the administration.

The Cabinet system has been regarded as the greatest contribution of the English people to the art of government. Gladstone called it the most curious formation in the political world of modern times. In Bagehot's opinion it is a hyphen, which joint a bucket that fastens the legislative part of the state to the executive part. Its importance in the British political system is great. Lowell regards it as 'the key stone of political arch' and Muir calls it 'the steering wheel of the ship of the State.

The Cabinet has been defined as a body of royal advisers, chosen by the Prime Minister in the name of the Crown. The members of the Cabinet must invariably be members of either house of Parliament and belong to the party in power in the Lower House. They must acknowledge the supremacy of the Prime Minister and follow the policy laid down by the Prime Minister. They must resign from their offices as soon as they lose the confidence of the House of Commons. All these features of the Cabinet system are the result of a long process of evolution, which took several centuries. Its story is narrated below—

1. During the Norman rule in England, the body of King's advisers and administrations was known as 'Curia Regis' or 'Royal Council'. It performed miscellaneous functions. It advised the King and administered justice. It was consulted by the King in times of need and also looked after his finances. During the reign of Edward VI its name was changed and it came to be known as Privy Council. Up to the reign of Charles I, the Cabinet was only a small body of King's advisers informally and irregularly chosen by the King. In the reign of Charles II the Cabinet acquired a formal shape. He appointed body of advisers and councillors which was known as 'cabal' a word formed by taking the first letters from the names of his five ministers, i.e., Clifford, Arlington, Buchingham, Ashley and Lauderdale. But it was not a Cabinet in any sense of the term. The Cabinet later grew out of the Privy Council as a special committee. Several times its members were impeached for the wrongs committed. Several times its members were impeached for the wrongs committed by them. Their

impeachment established the principle of ministerial responsibility. At the same, party system, which is essential for the proper working of the Cabinet system, developed in the period of Charles II. Thus the two essential features of the Cabinet system-the principle of ministerial responsibility and party system came into existence during the reign of Charles II.

2. The Cabinet system further developed during the period of William III and Queen Anne. The Glorious Revolution had firmly established the principle of the sovereignty of Parliament. The Whigs and the Tories were two parties where policies and forms acquired a clear shape. Both these factors helped in the growth of the Cabinet system. In the beginning William III chose his ministers from both the parties. But the practice failed to bring about homogeneity in the Cabinet, which is very essential for the purpose of proper administration. William III was compelled, in 1695, to call upon the Whig Party to form the Cabinet. The Whigs were at the time in power in the House of Commons. Thus was established the convention that the members of the Cabinet should belong to the party having majority in the House of Commons.
3. The Cabinet system in England received its final shape during the Hanoverian rule. George I was a German by nationality. He was quite ignorant of English customs, language and politics. So he could not take part in the deliberations of the Cabinet. Another man required taking his place to preside over the meetings of the Cabinet. Thus the post of Prime Minister came into existence. A person from among the members of the Cabinet took the chair. He cam to be called the Prime Minister. Sir Robert Walpole, in 1742, by resigning from his office after his defeat in the House of Commons, established the convention that the Cabinet should resign as soon as it lost the confidence of the House. This convention got firmly established gradually and with it the growth of the Cabinet system became complete.

POINTS TO REMEMBER

The Cabinet is the real executive as against the King or Queen who is only a nominal head. The Cabinet has been defined in colourful phrases by various constitutionalists. The Cabinet came into existence as a result of historical evolution conversing a period of centuries. During Norman rule in England, Curia Regis or Royal Council came into existence. During the reign of Edward VI, its name was changed and it came to be known as Privy Council. The Cabinet is the child of the Privy Council. The Cabinet system further developed during the reign of William III and Queen Anne. The principle of party government was established during this period. During the reign of George I, the office of Prime Minister came into existence.

Q.10. How is the Cabinet formed in England? Discuss its functions and importance.

OR

Q. 'The Cabinet is the keystone of the political arch *(Lowell)* Discuss.

OR

Q. The Cabinet is the steering wheel of the ship of the State *(Ramsay Muir)* Discuss.

Ans: Formation of Cabinet: A new Cabinet is formed after general election to the House of Commons or when the Cabinet-in-Power is defeated by an adverse vote of the House.

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A minister must be a member of either House of Parliament. A non-member may also be appointed minister but he has to become the Member of Parliament either by being made a peer or by a 'safe constituency' being made available for him in the House of Commons. The King or Queen appoints all the ministers although it is just a ceremonial affair. The King must send for the leader of the party controlling a majority in the House of Commons and he is asked to form the Ministry. The leader is designated as Prime Minister. In case a cabinet resigns the king must call the leader of opposition and appoint him as Prime Minister without any further consultation. The Prime Minister, then, puts up a list of his colleagues who are appointed ministers by the King without any hesitation. Although Prime Minister enjoys a good deal of freedom of choice in the selection of his colleagues yet he cannot ignore important members of his party. A Anthony H. Birch puts it, Harold Macmillan had to give senior posts to R.A. Butler and Selwyin Lloyd, Lord Home had to appoint R.A. Butler, Edward Heath and Reginald Mandling. Hard Wilson had to appoint George Brown, James Callaghan and Patrick Gordon Walker." He must keep into account the need for maintaining party solidarity and claims of the senior men in the party. The selection of ministers is not an easy job. Disraeli called it the work of greater time, great labour and great responsibility. Prime Minister is central to the formation, continuance and dismissal of the Cabinet. If a minister differs with his policy, he resigns from the Cabinet.

As is clear from above, the King has little freedom of choice in the formation of the Cabinet but the King many have freedom of choice when no single party in the House of Commons wins an absolute majority or when the Prime Minister resigns or dies. Queen Victoria exercised this freedom at various occasions. In 1894 Gladstone resigned. Queen Victoria appointed Lord Rosebery although he did not have a sound claim to the leadership of his party.

Another important factor, which is noteworthy, is that the Prime Minister must belong to the House of Commons. This convention was established in 1923 when the King had a choice between Mr. Baldwin and Lord Curzon. The King appointed Mr. Baldwin and set aside the claim of Lord Curzon because the latter was a member of the House of Lords and the former was a member of the House of Commons. Similarly in 1940 Mr. Churchill was selected in preference to Lord Halifax. Jennings supports this convention on the plea that 'the Prime Minister should have his finger on the pulse of the Parliament which is the House of Commons

HOW TO THROW A CABINET OUT OF OFFICE

The Cabinet may be thrown out of office by an adverse vote in the House of Commons by any of the following methods:

(a) A token cut may be made in the salary of a minister during budget discussion by a majority vote in the House of Commons.

(b) The House may reject a Bill initiated by the minister and declared vital by the Cabinet.

(c) The House may pass a certain Bill opposed by the government.

(d) The House may pass a vote of censure against a certain minister.

(e) Lastly, the House may pass a straight vote of no confidence regarding the general policy of the government.

Although the Cabinet can be ousted from office in a variety of ways yet it is now seldom possible for the House of Commons to throw a Cabinet out of office. A Cabinet continues in office through a subservient majority in the House and if there is an imminent danger of defeat of the government in the House on a particular issue, the Prime Minister seeks earlier dissolution of the House from the King which request must be acceded to by way of a convention.

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FUNCTION OF THE CABINET

The Cabinet enjoys a pivotal position in the machinery of government. Philosophers in colourful phrases have described the position of the Cabinet. Ramsay Muir calls it the steering wheel of State. Lowell calls it the keystone of the political arch. It controls both administration and legislation. Some of its functions may be briefly described as follows:

1. Policy-determining Functions: The Cabinet is a deliberative and policy-formulating body. It discusses and decides all sorts of national and international problems and attempts to reach unanimous agreement. The Cabinet must present to parliament and to the world a single united policy and if an individual member finds it's impossible to agree with the conclusions of the Cabinet he must resign.

When the Cabinet has determined on a policy, an appropriate Department of government carries it out by administrative action, if the existing law permits it or by submitting a new one to Parliament. Legislation is, thus, the handmaid of administration and Cabinet is the instrument, as Bagehot has said, that links the executive branch of government to the legislative. Cabinet decides the measures, which are to receive priority, and Ministers initiate them in Parliament, defend them there and see they are enacted.

2. Executive Functions: The Cabinet is the real executive as against the nominal executive represented by the King or Queen. Although according to the Constitutional Law all executive authority is wielded in the King yet in actual practice, the Cabinet wields the effective and real executive authority. The Cabinet formulates the general policy of the government. It determines the foreign policy of the government and decides questions regarding war and peace. The minister in charge of foreign affairs negotiates treaties and agreements of all sorts with foreign states on behalf of the Cabinet. He ratifies the treaties without any formal approval of Parliament.

The ministers make all-important appointments. Each minister is in charge of a particular department and conducts the administration thereof. The Cabinet co-ordinates the activities of the various departments of the government and decides inter-departmental disputes.

3. Legislative Functions: Not only does the Cabinet control the executive branch of the government but also it controls legislation. The Parliament is summoned and prorogued by the King on the advice of the Cabinet. The King on the advice of the Prime Minister may dissolve the House of Commons before expiry of its normal term. The speech of the King in Parliament in the beginning of each session is prepared by it. In fact, the general policy of the Cabinet and its legislative programme are outlined in this speech. All-important Bills passed by the Parliament are introduced, explained and defended on the floor of the House by members of the Cabinet. A Bill that does not enjoy the support of the Cabinet has little chance of success in Parliament. Some eighty-five per cent of all Bills introduced in Parliament are those, which are initiated by the ministers.

4. Financial Functions: The budget is prepared by the Chancellor of Exchequer, an important member of the Cabinet. It is introduced by him in the House of Commons. The budget before its introduction in the House is not disclosed in the Cabinet meetings, although disputes regarding climates for various departments are settled in the Cabinet..

Invariably, the budget is passed as it is with the support of a loyal majority in the House of Commons. No demand for grant can be cut down without the willing consent of the Cabinet.

5. Judicial Functions: The judges of the important courts are appointed by the King on the advice of the Lord Chancellor, a member of the Cabinet. The power of pardon, reprieve and respite is exercised by the King on the advice of the Secretary of State for Home Affairs.

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THE CABINET AS A COORDINATOR

The essential function of the Cabinet is to co-ordinate and guides the functions of the government. The Government is a complicated machine and all its components must work in perfect harmony and unison. No department of the Government can work in isolation from other department. It is the Cabinet which .co-ordinates all inter-departmental functions. The Departments themselves try to resolve all differences but when they fail to arrive at an agreed decision, the matter comes before the Cabinet, which thrashes out the issues involved and strikes out a firm decision.

The powers and functions of the Cabinet show that it dominates and controls almost every activity of the government. It is the most vital part of the government machinery. It is the engine of the ship of state. It controls the King, the Parliament and through that the electorate.

POINTS TO REMEMBER

A Cabinet is formed after general election of the House of Commons or when the Cabinet-in-Power is defeated by an adverse vote of the House. A minister must be a member of either House of Parliament. The King or Queen has little discretion in appointments of ministers. A ministry may be thrown out of office by an adverse vote in the House of Commons. Lack of confidence in the Ministry can be indicated in a number of ways. The Cabinet enjoys a pivotal position in the administration of the country. It performs all the executive functions of the Crown. It makes appointments of all civil and military officials. It can declare war and peace. It initiates and pilots some 90% of all the Bills in the House of Commons. No Bill has a chance of success if it does not enjoy the support of the Cabinet. The budget is prepared by the Chancellor of Exchequer and is passed as it is. The cabinet enjoys the judicial powers of the King or Queen.

Q.11. Discuss the salient features of the Cabinet System of Government as it obtains in Great Britain.

Ans: The Cabinet system of Great Britain works on the basis of some rigid principles, which are mainly the outcome of various conventions. Although these principles do not form a part of the law of the land yet these are scrupulously observed and followed. These principles present a typical model of a parliamentary democracy. Success of this system serves as an inspiration to other nations of the world and they aspire to follow the same principles in their system of government. The Cabinet system of government is, thus, a valuable contribution of the British people to Political Science. The features of the Cabinet system as it obtains in Great Britain may be summed up as follows:

1. Exclusion of the King: The King, under Cabinet form of government, is no longer the determining and deciding factor in the conduct of government authority. The Cabinet in the name of the King exercises entire executive power. As the King takes no part in politics, he is not supposed to preside over the meetings of the Cabinet wherein decisions regarding the executive policy of the government are taken. The exclusion of the King form Cabinet meetings was originally a matter of sheer accident during the reign of the King George I, who would not preside over the meetings of the Cabinet since he was German by nationality and would not understand English language. But now it is a fundamental convention of British parliamentary democracy.

2. Political Homogeneity: Member of the Cabinet usually belongs to the same political party and have similar political views. For over two hundred years prior to 1915 every Ministry was constituted on the basis of this principle. But during critical days of World War I, a composite government representing all three parties of Great Britain was constituted. Since 1931, this practice has been followed many a time. There have been such national governments under Ramsay Macdonald, Baldwin, Chamberlain and Churchill.

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3. Close Relationship between the Executive and the Legislature: All the members of the Cabinet must be members of either House of Parliament. A non-member of Parliament may also be appointed minister but if he is not made a peer, he must become the member of the House of Commons within six months. Since the ministers belong to the majority party of the House, a close contact is established between the executive and the legislature. This is in sharp contrast with the American political system which is based on the principle of separation of powers and which seeks to keep the executive and the legislature separate from each other.

4. Unity of the Cabinet: The Cabinet always acts as a unit. The members of the Cabinet may have differences in the Cabinet meetings but once a decision is taken, the dissenting members cannot express their dissenting opinions before Parliament or the people. They are supposed to face the House and the people with one voice. Lord Melbourne is stated to have remarked to his Cabinet colleagues. It does not in the least matter what we say in the Cabinet meetings but we must all say the same in the public.

5. Ministerial Responsibility: The responsibility of ministers is two-fold. It is legal and political. Legally every minister is responsible for the advice that he may give to the King. That is why a minister, who will be responsible before the court of the law for the legality of his actions, must countersign every act of the King. This is illustrated by the saying: "The King can do no wrong." Political responsibility implies that the ministers are responsible to the House of Commons and must resign whenever a vote of no confidence is passed against them. But in actual practice the Cabinet seldom goes out of office on losing the confidence of the House. It dissolves the House of Commons before its own removal. It resigns only after the general election if it fails to win majority at the polls again. Thus it does not consider itself to be responsible to the House, instead it feels its responsibility to the electorate.

The responsibility to the Parliament is also collective. The Cabinet always acts as a unit. A vote of no confidence against one Cabinet minister is considered to be a vote of no confidence against the whole Cabinet. The Cabinet must sink or swim together. But there have been occasions when a blundering minister, whose policy the House of Commons or the public does not approve, is asked to resign alone while the rest of the Cabinet continues.

6. Leadership of the Prime Minister: The Prime Minister is the leader of Cabinet. He forms the Cabinet and allots portfolios to ministers. The Cabinet ministers work under his guidance and direction. He presides over the meetings of the Cabinet. Other ministers regarding the major problems of their departments consult him. He co-ordinates the activities of the ministers and settles disputes among them. He can call for the resignation of any minister if he does not approve of his policy. It happen so a number of times. In 1922 Mr. Montague the Secretary of State for India was dismissed. In 1935 Sir Samuel Hoare resigned for he had differences with Baldwin, the then Prime Minister. In 1938, Mr. Anthony Eden had to resign because he differed with the Prime Minister Mr. Cambodian. Moreover life of the Cabinet revolves round the Prime Minister. If the Prime Minister resigns, the whole Cabinet is supposed to have resigned. In 1931, Ramsay Macdonald resigned without informing his colleagues. With his resignation all the ministers were automatically removed from office. Laski has therefore aptly remarked it, "with the announcement of the Prime Minister's decision to resign the Ministers came to know of their sad demise." The Prime Minister, hence, central to life and central to death of the Cabinet.

7. Secrecy of Cabinet Proceedings: All the members of the Cabinet are supposed to observe secrecy in connection with the proceeding of the Cabinet meetings. They are not supposed to divulge secrets before the people of the Parliament. The Cabinet is thus a secret body collectively responsible for its decisions. It deliberates in secret and its proceedings are highly confidential. The Privy Councillor's oath imposes an obligation not to disclose Cabinet secrets.

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Unit Lloyd George Established the Cabinet Secretariat in 1917, no records were kept and only the Prime minister could take notes of the points discussed. Now, however, there is a separate full-fledged secretariat and the proceedings are recorded but kept secret. No formal reports of proceedings are ever published. All members are ever published. All members are under strict oath of secrecy. However, the secrecy is violated when a minister who differs with Cabinet policy resigns and makes a statement giving reasons of his resignation. It is also violated when memoirs of a minister are published. The King gets a summary of the minutes of proceedings of the Cabinet and also all the dispatches received or sent out by the Cabinet.

8. King or Queen as a Titular Head: A Cabinet Government must have a titular head of the State in whose name the country is administered. This head is the Queen or king. The real authority of governing the people belongs to the responsible Ministers. The principle is in conformity to and exploration of Sir Henry Maine's often quoted maxim that ‘the King of Britain resigns but does not rule".

9. Government by Majority in the House of Commons: The second principle of Cabinet Government is that the King summons the leader of the parliamentary majority party to form the Government. So Jennings writes. "The Queen has one and only one function of primary importance. It is to points a Prime Minister. In this, her choice is limited. It is necessary; rather essential that the person commissioned to form the government should be a party leader that commands majority in Parliament. It was an easy task so long as there were only two political parties, With the emergence of the Labour party as third political party sometimes it happens, as it did in 1924 and 1929, that no single party could command the majority. In these circumstances the King exercises his discretion to summoning a leader who can command the support of majority with the Commons. Twice, in 1924 and 1929, Ramsay MacDonald, the leader of the party, was summoned to form a Ministry though his party was not in majority although on both the occasions MacDonald had the admitted support of Liberal party and thus he was in a position to command a district majority. In times of grave crisis and national emergency like the Economic Depression of 1931 and the Second World War, Britain experimented with coalition Ministers. But it is a feature of the British Constitution. Party solidarity demands political homogeneity, which can be secured only when the Ministry is formed from one single majority party.

10. Cabinet Committees: The Cabinet acts through various sub-committees. For example, the Defence Committee is the most important. It is presided over by the Prime Minister and includes ministers concerned with defence, the Chancellor of Exchequer, the supply minister, the labour minister, the three Chiefs of Staff, etc. Then there is a Foreign Affairs, Committee presided over by the Prime Minister. It includes Secretary of State for Foreign Affairs. Chancellor of Exchequer, Defence Minister, Minister for Trade etc. Deputy Prime Minister or another important minister presides over the Economic Committee generally. It deals with economic policy. Prime Minister Thatcher had four main committees in 1983.

(a) Home and social Affairs.
(b) Legislation Committee
(c) Economic strategy Committee
(d) Overseas and Defence Policy Committee.

The decisions of these committees are generally accepted by the Cabinet.

POINTS TO REMEMBER

The Cabinet system of England is based on some rigid principles to which no exceptio is ordinarily made. The first feature is political homogeneity, which means that normally all th ministers should belong to a single political party. Close relationship between the executive an the legislature is the second important principle. The members of the Cabinet are not supposed t

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express their dissenting opinions before Parliament or the people. They must speak with one voice. Ministerial responsibility is another outstanding feature of the Cabinet system. This responsibility is both political and legal. The Prime Minister is the leader of the Cabinet. The ministers are supposed to maintain strict secrecy about decisions and proceedings of the Cabinet meetings.

Q.12. 'The Cabinet in England has become virtual dictator'. Discuss.

OR

Q. 'The control exercised by the House of Commons over Cabinet has become weak and ineffectual." Comment and examine the relation between the House of Commons and the Cabinet as it has developed in the 20th century.

OR

Q. The House of Commons acts in accordance with Cabinet's Examine the truth or otherwise of the statement.

Ans: In Great Britain, Parliament was sovereign in theory as also in practice till the close of the 19th century. But in the 20th century Parliament, which in practice means the House of Commons, has lost much of its powers to the Cabinet, which is in structure a committee of the House of Commons. In theory the ministers are responsible to Parliament. The tenure of their office depends upon the will of he House of Commons. It can remove the Cabinet by a vote of no confidence. The Cabinet is under the general control and supervision of the House of Commons. But in actual practice, the boot is on the other leg. The Cabinet has become the master of its own master. It controls the House of Commons so much so that it has become merely the registry office of the Cabinet. The Cabinet has become almost a dictator.

The Cabinet enjoys the support of majority in the House of Commons. Once a Cabinet comes into power, it cannot be ousted by an adverse vote in the House. The last Cabinet which was thrown out of office by a vote of no-confidence was the Liberal Government of 1895. Thus the powers of House to remove Cabinet has fallen in disuse.

The Cabinet controls legislative policy. It formulates, initiates, and defends legislative measures in the House. The House has to accept them. The House has become a rubber stamp to be affixed to give legal sanction to the political decisions of the Cabinet. There is every truth in the remarks that it is the Cabinet, which legislates with the passive approval of the House of Commons. This approval of the House of Commons is never refused. About 85% of all the Bills are introduced and piloted by the Cabinet. Private members of the House of Commons may introduce. Bills but these have very little change of success if the Cabinet does not support these. Some seven-eight of the time of the House is consumed by government measures and very little time is left for the private members of the House to put forward and defend their own proposals. It is the Cabinet, which decides what legislative business the House shall take up and what time shall be allotted to it. The Cabinet summons, adjourns, and prorogues the Parliament at will.

Not only does the Cabinet control ordinary legislation but also it enjoys full control over State finance. The Chancellor of Exchequer prepares the budget and it is passed as it is. The private members of the House may put up proposals for reduction of expenditure but usually are ineffective because their proposals are rarely carried. The members do not understand the complexities and technicalities of the budget and they can recommend little change except holding general discussions. In fact, the private members of the House do not have any access to the government accounts. The result is that they are never in a position to criticize the budget properly. What they do is that they only attack the policy of the department of the government for which financial sanction is sought. They only beat about the bush and can never assert themselves on facts and figures.

The Cabinet makes treaties with other States without previous consultation of the Parliament. Once the Cabinet signs a treaty, it becomes valid because no previous ratification by the Parliament is required. The Cabinet may make secret commitment with other governments and may face the Parliament with fait accompli. It may take even military action as the Eden government did in case of attack on Suez without consulting the Parliament.

In short, it is the Cabinet, which has taken over all the functions of the House. The latter has become only a registering body. Its authority has suffered almost in all directions. Ramsay Muir refers to this phenomenon as the growing dictatorship of the Cabinet. The following are the reasons of the growing strength of the Cabinet at the cost of the House of Commons.

1. Party Discipline: The main reason of Cabinet dictatorship lies in the growth of rigid party discipline. In the 19the century, the parties were not so well organized as these are today. The number of voters used to be very small on account of restricted franchise. Most of the candidates would contrast election independently. They would go to their constituencies, preach their own doctrines and meet their own expenses. They were not thus pledged to the support of any party government. There was, therefore, a good deal of free voting in the House of Commons. The ministers were considered to be hired functionaries, and could be dismissed whenever the House did not like their policy. This position has changed altogether now on account of the introduction of universal franchise. The number of voters has increased immensely. The constituencies have become big. The cost of electioneering has increased. Now it is not within the means of an independent candidate to approach the voters and canvass for himself. Independent electioneering has thus become difficult. In order to be successful, it is, therefore, essential that one should be the member of one party or another. On account of the increased dependence of a person on party, party discipline and organization have become very rigid. The members of a party are pledged to its support under all circumstances. Inside the House, they are bound by discipline to vote in favour of the party. Voting against the party is regarded as breach of discipline for which a person is liable to be expelled from the party. Expulsion from the party is considered to be political death. The fear of disciplinary action keeps the members tongue-tied and they do not have the guts to oppose the party leadership even if they do not see eye to eye with them. All this means that once a certain party wins majority of seats in the House of Commons and it forms its Cabinet, it will continue in office without any fear and fright. The members of the party will blindly support the ministers even if some of them differ. Loyalty to the party makes a person a part of the party machine. Thus the party, by virtue of its majority, gets the powers, which technically belong to the whole Parliament. A private member of the House is more or less an imposing cypher. If he is an independent member, his views, however fine and true, cut no ice, if he belongs to a party, he votes it whether he like its policies or not.

2. Power of Dissolution: The second factor, which has strengthened the Cabinet, is its power to get the House of Commons dissolved before the expiry of its normal term. The Prime Minister can request the King for dissolution of the House. As a matter of convention, the King always accedes to such a request. The Cabinet can thus easily dampen the enthusiasm of the members who want to revolt against it by threatening them with the dissolution of the House of Commons. Dissolution means a new general election. The sitting members do not want it. They would like to enjoy the membership of the House for its full term. In case of an earlier dissolution, they will have to seek re-election which involves a lot of expenditure, and botheration. Above all, one may not be certain of being re-elected. Threat of an earlier dissolution not only binds the majority party but also it cools down the zeal of the opposition. Thus according

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to Keith "apart from party loyalty, the Cabinet possesses over its followers and to some extent over the opposition, a powerful weapon in the possibility of securing a dissolution of parliament.

3. Two-party System: Another factor, which has contributed to the strength of the Cabinet, is the two-party system, which prevails in England. The parties dominating the political life of England at present are the Labour Party and the Conservative Party. These two parties are poles apart so far as their ideals and objectives are concerned. As a matter of principle it is difficult for a member of the party-in-power to cross the floor and join the opposition even if he has certain differences with Cabinet on a particular issue. After all, the Cabinet of his own party is nearer to him than the opposition. It is, therefore rare that a government supporter may vote against it.

4. Delegated Legislation: The House of Commons has to deal with very heavy work. Being hard pressed for time; it has little opportunity or leisure to scrutinize every detail of administration. So it is forced to leave a good deal of work to the cabinet, through delegated legislation and Orders-in-Council. It simply passes various Bills in broad outlines and leaves the rest to be filled in by the executive. The new tendency has resulted in the enormous increase in the powers of the Cabinet and Civil servants. Bureaucracy now makes All sorts of laws by way of Orders in-Council. There is justification in the remarks of Ramsey Muir that an omnipotent Cabinet with the immense but concealed power of bureaucracy sheltered behind it is the dominating fact of the British system of government as it exists today".

5. Committee System: Most of the controversial matters are thrashed out in the committees and very little scope is left for discussion in the House.

6. Control of the Cabinet over the Business of the House: The rules of procedure in the House of Commons especially favor the Cabinet. Some seven-eighth of the time of the House is given over to Government Bills. Under standing orders of the House time allowed for the discussion of a private member's Bill can be given over to a government measure.

7. Enhanced Importance of the Electorate: The spread of general education and political consciousness among the people are factors, which are also responsible for transfer of power from Parliament to the electorate. Before the beginning of 20th century, public opinion had very little opportunity for functioning. Now with the development of press and other rapid means of communication and publicity the public attention is at once focused on any problem facing the country. Millions read a speech of member in the Parliament. Political organizations and associations at once meet and pass resolutions holding out a threat or reward. Under the consent gaze of the electorate, the members of Parliament have lost that freedom of action, which they once enjoyed.

8. National Emergencies: A series of national emergencies in England have also been responsible for strengthening the hands of the government in order to enable them to meet to situation and save the country. During the World War 1914-18, huge powers were delegated to the then government. The period between the two wars (1918-39) was also characterized by various problems like industrial, labour unrest and the like. The National Government (1931-35) was given almost dictatorial powers. It could even impose duties without the consent of Parliament. During World War II again, the House had to concede a lot to the government in the interest of Public safety and security and for the purpose of prosecuting war successfully. Thus we find that modern situation itself goes in favour of enhancing the powers of the executive. Parliamentary sovereignty is, therefore, passing through a crisis and has lost its sharp teeth.

CONCLUSION

There is no doubt that the British Cabinet has acquired vast powers and its powers are still on the increase. We cannot, however, accuse it of being dictatorial like Hitler or Mussolini.

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Although the Cabinet enjoys autocratic powers yet it is an autocracy with consent and is exercised under a constant fire of criticism of the Parliament, press and platform. The Cabinet is fully aware of the fact that it cannot go beyond certain limits because British public opinion is highly assertive and enlightened. It can exercise vast powers only as long as it is able to maintain the support of a majority in the House of Commons. The Cabinet knows that if it uses the threat of dissolution so very frequently, there may be split in the ranks of the party. The discipline of a private member is not like the obedience of a solider to the commander. The House of Commons influences Cabinet policies vitally. It is the mirror of public opinion. No Cabinet can ignore it. It is the pulse of the people and cabinet learns of their reaction to its policies from discussion in the House. The Cabinet adjusts policies accordingly. The House exerts influence through discussion, debate, questions, adjournment motions, resolutions and discussion on the budget. There is the opposition party in the House, which is always ready to magnify every mistake of the Cabinet. It keeps the government always on its tenterhooks. It has to explain its policies every time. Thus the Cabinet can become dictator only by bringing success and assuring the House and the electorate outside that it is governing best under the circumstances. Its dictatorship is dictatorship by consent. It has to yield many a time to the House of Commons. At least it cannot be insensitive to public opinion outside. There are many examples of Cabinet, which yielded when faced with unyielding Parliament.

POINTS TO REMEMBER

In Great Britain, Parliament was sovereign in theory as well as in practice. It had complete control over legislation. Cabinet was responsible to it and could be ousted by a vote of no confidence. But in the twentieth century, the position has changed altogether. Now it is not the Parliament, which controls the executive, instead it is the executive, which controls the Parliament. This phenomenon is known as the rise of Cabinet Dictatorship. Several reasons are attributed to the growth of this phenomenon.

(a) Growth of rigid party discipline has been responsible to a very great extent for the subordination of the members of the House of Commons to the party. They are bound by the discipline to the party machine and cannot act independently.

(b) Power of earlier dissolution of the House of Commons is a potent weapon in the hands of the Cabinet, which may be used at any time to cool down the recalcitrant House.

(c) Existence of two-party system in England is also responsible for the rise of Cabinet Dictatorship.

(d) The Cabinet has acquired great powers by way of delegated legislation.

(e) The rules of procedure of the House also favour the Cabinet

(f) Consciousness of the general masses too is responsible for the transfer of powers from the Parliament to the electorate.

(g) National emergencies have placed unrestricted powers in the hands of the executive.

Q.13. The Prime Minister is by far the most powerful man in the country and not without reason he is likened to a dictator." Critically examine the statement with reference to the powers and position of the Prime Minister in the British Constitution.

Q. "The Prime Minister is the Keystone of the Cabinet arch." Discuss.

Ans: Wherever there is a parliamentary form of government the general election has become the election of the Prime Minister. Laski has rightly said, "The key-stone of the Cabinet arch is

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First among Equal

the Prime Minister. He is central to its formation, central to its life, and central to its death. No cabinet can fail to take its complexion from what he is and does in its direction. The British Prime Minister is more than primus inter pares, but less than autocrat."

Like so many other institutions and offices, the office of Prime Minister is also the result of a Convention. Till the passage of the Ministers of the Crown Act 1937, the position of the Prime Ministers was not legally recognised. Only twice the office of Prime Minister was referred to in legal records before the passage of this Act. First of all, it appeared in the preamble to the Treaty of Berlin, 1878, when Beaconsfield was referred to "First Lord of Her Majesty's Treasury and Prime Minister of England". Second time in 1905, the Office of the Prime Minister was mentioned in the 'Order of Precedence' although he was given only the fifth position and was placed even below the Archbishop of York.

The Prime Minister of Great Britain enjoys a position of supreme importance in the British Constitution. He is often referred to as an autocrat so long as he enjoys the support of a stable majority in the House of Commons. He is even more powerful than the American President in certain respects. The following points clearly indicate the importance of his office:

1. Leadership of the Cabinet: If Cabinet is the engine of the ship of state; the Prime Minister is its driver. He is the moon round which the stars revolve. The Prime Minister forms the Ministry. He appoints and dismisses the ministers with the ceremonial approval of the King. In the selection of his colleagues, his choice is unrestrained except that he must include 5 or 6 top leaders of his party. Otherwise he has a free hand to choose his colleagues because he has to find a homogeneous team. Sometimes, a Prime Minister with dominating personality may keep even a prominent member of his party out of his Cabinet. For example Mr. Chamberlain kept Mr. Churchill out of his Cabinet.

He is the Chairman of the Cabinet and presides over its meetings. He may force any member to resign if he does not see eye to eye with him. Prime Minister Mrs. Margaret Thatcher has given a new term to her government—the conviction cabinet by stating that she could not waste time having any internal argument. But ordinarily, decisions in the Cabinet are taken by a majority vote but a policy supported by the Prime Minister is more likely to be accepted. He can ask his colleagues to accept his views or resign. In case, the Cabinet does not yield to his wishes he may even threaten them with his own resignation, which means the collapse of the whole Cabinet. Ramsay Muir demonstrated this attitude in 1931.

He is not only the leader of the cabinet, which is his own creation, but also he is the Party Chief and as such wields immense influence over his colleagues who invariably submit to his wishes.

2. Leadership of the House of Commons: The Prime Minister is the leader of the Parliament, which in practice means the House of Commons. He makes all principle announcements regarding major issues of governmental policy in the House. In all political battles in the House, he represents the Cabinet. He is the chief spokesman of the government and bears the burden of opposition's strong attacks and criticisms in debates from the government benches.

But nowadays-governmental work has become so unwieldy and unmanageable that it is not possible for a single person to cope with both executive and legislative functions. The Prime Minister has to attend to so much work in his office as also around the Cabinet table, that it has become humanly impossible for him to take full interest in the House. It has now become customary to delegate leadership of the House to some senior minister of the Cabinet. But still the Prime Minister speaks on all important government measures.

3. Source of Communication between the Cabinet and the Queen: The Prime Minister is a link, between the Cabinet and the Queen. He is the chief advisor of the Crown not only in the affairs of the United Kingdom but also in those of British Colonies and Commonwealth countries. Although every Cabinet minister has a direct right of access to the Queen, yet no loyal colleague would ever think of communicating any important matter to the Queen without the consultation of the Prime Minister. Mr. Baldwin exercised his freedom regarding advising the King even in personal matters. He advised King Edward VII on his contemplated marriage with Mrs. Simpson. He consulted the Cabinet only at that stage when differences became irreconcilable.

4. Control over Foreign Affairs: Conduct of foreign relations is the direct concern of the Prime Minister even though he does not hold this portfolio. The Foreign Secretary always keeps a close contact with the Prime Minister and consults him on all-important matters of foreign policy. In fact all international agreements and treaties on behalf of the U.K. are made on his initiative. He may give a promise beforehand that such and such treaty will be signed and ratified. The Prime Minister may occasionally attend and participate in international conferences. Lord Beaconsfield attended Berlin Conference Lloyd George took part in Paris Peace Conference. Mr. Chamberlain took part in Munich Conference; Churchill had some six meetings with President Roosevelt and two with Stalin during World War II. At these conferences the Prime Minister may even make secret commitments.

5. Control over Finances: Not only does the Prime Minister exercise control over the foreign affairs but also he has complete control over the national purse. The Chancellor of Exchequer prepares the budget but he keeps the Prime Minister regularly informed about the financial affairs.

6. Patronage: The Prime Minister enjoys vast patronage both in the government and the Church. He appoints a number of officials like ambassadors and other diplomatic representatives, Governor-General of Dominions, Governors of Colonies and a number of other officials. He recommends award of all titles and honours by the Queen to the distinguished persons in society.

7. Manager-in-Chief of the Government: The Prime Minister is the chief coordinator of policies of the several ministries and departments. He is in fact a general manager of the Government organisation.

8. Chairman of various Bodies: The Prime Minister is the ex-officio Chairman of the important Committees like foreign affairs, defence and economic policy.

9. His Position: The powers and functions of the Prime Minister justify the remark of Marriott that he is the political ruler of England. He is endowed with such a plentitude of power, as no other constitutional ruler in the world possesses, not even the President of America. For so long as his party commands a majority in the House of Commons, he can give a pledge beforehand that such and such treaty will be signed, such and such law will be passed and such and such amount of money will be sanctioned. Thus the formal powers of the Prime Minister compare very favourably to those of an autocrat. The prerogatives, which the King has lost in the course of history, have fallen in the hands of the Prime Minister in the position of his being the principal adviser of the King. The Prime Minister enjoying the support of a stable majority in the House can make, amend and repeal the law and Constitution of England, can impose any amount of taxation and can declare war and conclude peace. During national emergency, he becomes a virtual dictator of the country. The Cabinet is the real government of the country and he is the master of the Cabinet.

The powers of the Prime Minister, as a matter of fact, depend upon the personality of the person holding this office. Men like Disraeli, Gladstone, Peel and Churchill proved to be

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2– GENERAL FEATURES

As stated earlier the present Constitution of the United States of America was adopted at the Philadelphia Convention held in 1787, after the minimum required number of States had ratified it. The Constitution is unique in many respects. It is probably the briefest Constitution in the world. Originally it consisted of 7 Articles, but 26 Amendments have been added to it during the last 200 years. The constitution presents a classic example of its rigidity. The Separation of Powers a doctrine propounded by Montesquieu, had found favour in American Constitution in a way unknown to any other constitution in the world. The application of the principle of Separation of powers has been combined with a remarkable system of checks and balances in the U.S. administration.

Again, the judiciary occupies a pivotal position in the U.S. political system. It exercises judicial review, It interprets the constitution and has developed it. To take an instance the Constitution created a weak Federal Government but the Supreme Court has made the Central Government sufficiently strong in order to meet the needs of modern America through its doctrine of implied powers.

Q.1. Analyse the salient features of the Constitution of the United States of America.

Ans: The Constitution of the United States is characterised by certain special features. Some of which may be summed up as follows:

1. Written Character: Like other federal constitutions in the world, the American Constitution is written in form. It is a brief document consisting of only 7 Articles and 26 Amendments. Indeed it was a skeleton constitution since the framers of the constitution left the details to be filled in by the Acts of the Congress. The constitution was thus a starting point or taking off ground. It has been adequately clothed with conventions, customs, judicial decisions and legislative measures. The unwritten element in the form of conventions has played a vital role so that the very nature of the constitution stands changed now. To take one example, the fathers of the constitution provided for indirect election of the President but as a matter of convention, he is now directly elected.

2. Conventions and Usages: The framers of Constitution did not make a strong jacket. They only made a Constitution capable of giving a starting point; a take off ground. They made a skeleton, which was to be supplied with flesh and blood by way of customs, traditions and usages. During the long period of its working it is seen that development of conventions and traditions have changed the Constitution beyond recognition. For example, by way of convention, indirect election of the President has become a direct one. The first President of America, George Washington established a convention that a President should not continue for more that two terms. This convention was adhered to till 1940, when President Roosevelt offered himself for a third term and even fourth in 1944. But such was the force of convention set by Washington that the constitution was amended limiting the tenure of the President for 2 terms.

3. Rigidity: The American Constitution is probably the most rigid constitution in the world. A very lengthy and cumbersome process can amend it. Because of the complicated nature of the amendment procedure, sometimes it takes years before an amendment becomes operative after it has been proposed. Every amendment, which can be moved in two different ways, must be ratified by three-fourths of the States. The rigidity of the constitution is obvious from the fact that during the 200 years it has been in operation, only 26 amendments have been made in the Constitution.

4. Federal Character: The American Constitution is federal in character. It was originally a federation of 13 States but due to admission of new States, it is now a federation of

50 States. A constitutional division of powers has been made between the Center and the federating units the constitution enumerates the powers of the Center and leaves the residue of powers to be exercised by the federating States. The States exercises all powers not delegated to the Centre or not reserved for the people. The Constitution thus creates a weak Centre because residuary powers have been given to the units. However, in practice, Federal Centre in America has become very powerful due to the application of the doctrine of *"Implied Powers"* as propounded by the Supreme Court of the U.S.A.

5. Supremacy of the Constitution: The Constitution is the supreme law of the land. Neither the Centre nor the States can override it. The Supreme Court can declare a law or an executive order repugnant to the Constitution unconstitutional and invalid.

6. Separation of Powers: The U.S. Constitution is based on the doctrine of *"Separation of Powers"*. Although the three wings of administration, viz., the executive, the legislature and the judiciary are inter-dependent and cannot be separated entirely in the interests of good government yet an attempt has been made in the American Constitution to separate them as much as possible. The Congress is the legislative organ. The President is the executive. He is elected directly by the people and has nothing to do with the Congress. He enjoys a fixed tenure of 4 years and is not a member of the Congress and cannot be removed by the vote of no confidence before the expiry of his term of office. He does not participate in debates, nor can he dissolve the Congress. Both are independent of each other. The Supreme Court heads the federal judiciary and enjoys freedom in its work. However, today, the Separation of Powers has been limited to a very large extent. The President today controls the legislative policy. This fact was more established in the times of Roosevelt administration. This ensures coordination between the executive and legislative branches of the government.

7. Checks and Balances: Recognising the importance of close co-operation among three organs of the government, the fathers of the Constitution introduced 'checks and balances.' The powers of one organ were so devised as to exercise a check upon the powers of others. As for example, the President can veto the Bills passed by the legislature. The Senate shares with the President his powers of making appointments to the various federal offices and conclusion of treaties and agreements with foreign States. 2/3 majorities in the Senate must ratify all such appointments and treaties. Through this power, the Senate controls the internal administration and external policy of the President. The Congress determines the organisation of federal judiciary and the President with the consent of the Senate appoints the judges of the Supreme Court. The Supreme Court can declare the laws passed by the Congress and executive action taken by the President *ultra vires*. In this way, the three organs of the government have been inter-locked.

8. Bill of Rights: The Constitution guarantees fundamental rights of person, property and liberty. It is, however, noteworthy that the rights were incorporated in the Constitution by a number of amendments effected after the Constitution was promulgated. They were not enumerated in the original draft of the Constitution. But by subsequent amendments, individual liberty has been effectively safeguarded. These rights have been introduced in the Constitution on the insistence of federating states and first 10 amendments were immediately made to incorporate the fundamental rights. The rights of citizens are enforceable by recourse to the judiciary. These rights cannot be modified or suspended except by a Constitutional amendment.

9. Judicial Review: The Constitution provides for judicial review of the legislative enactments. The federal judiciary can declare any legislation or executive action null and void if the same is found to be inconsistent with the provisions of the Constitution. The judiciary thus acts as the guardian and custodian of the Constitution and fundamental rights of citizens. The Supreme Court has so interpreted the Constitution that it has adapted it to the changing needs of

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successful Prime Ministers and added much to the prestige and dignity of this office. But a weak Prime Minister may lose much of the position and dignity of this office.

PRIME MINISTER AS PRIMUS INTER PARES

The position of Prime Minister in relation to other ministers was described during the 19th century as primes inter pares, i.e., the first among equals. It is no more true today. He is the master of the Cabinet. In essentials, the policy of the Cabinet is his policy. He is the moon among lesser stars. Another philosopher says that he is the sun round which the planets revolve. Of course, he cannot be a dictator. Though he exercises a general supervision, he cannot dictate arbitrarily to his colleagues who hold an equally important position in the party. He is under the constant criticism of the opposition. He is to pull his colleagues in the Cabinet and majority in the legislation with him. All this means that he cannot be called a dictator or an autocrat despite the fact that at times he may wield dictatorial powers.

THE PRIME MINISTER IS NOT DICTATOR

Those who say that the Prime Minister is fast becoming a dictator give these arguments.

(i) He can ask any minister to resign.

(ii) He can ask the queen to dissolve the House of Commons.

(iii) He can resign himself; his resignation will mean the resignation of the Cabinet. When we read these points we generally get the impression that the Prime Minister is a dictator. But the fact of the matter is that he is not a dictator. When he acts like that, he risks his power and position.

1. He can ask any minister to resign but in practice there are the following difficulties:

(a) Resignation of a Minister may cause rift in the party, Cabinet and the Parliament.

(b) No party has unlimited talents to be supplied to the Prime Minister.

(c) The people have no faith in the Cabinet, which changes every now and then.

2. He can ask the Queen to dissolve the House of Commons but he may not be able to do it due to the reasons given below.

(a) Fresh election means expense of millions of Pounds. No party is always ready with huge sums to spend.

(b) The opinion polls always do not show that he is likely to win the election.

(c) No Prime Minister can be 100% sure of the victory of his party at the polls. Election means many sleepless nights for the leadership and the workers. So no Prime Minister will invite elections. He will hold it when he has to.

3. The Prime Minister can resign himself. It will lead to the resignation of the Cabinet. This is true in theory but not in practice as the number 2 in the cabinet is always ready and eager to step into his shoes.

(a) Mr. Lloyd George has said, that there is no generosity at the top; there is always someone willing, even eager, to take his place.

(b) He can never say like Clement VII, "Now that we have got the Papacy let us enjoy it."

(c) The Parliamentary system is conducted on the vital hypothesis that no man is indispensable; and its daily operation is a constant and salutary reminder to the Prime Minister that his fortune depends upon his recognition of this truth, says Laski.

The Prime minister is not a dictator; he is first among the equals ~~or little~~ more than this.

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chrony:- Loyalist

We will say in the end that wherever there is a Parliamentary form of government, the general election has become the election of the Prime Minister. Very often the party is spoken of a party of such and such Prime Minister.

POINTS TO REMEMBER

The Prime Minister holds a key position in the governmental structure of Great Britain. He is central to formation, life and death of the Cabinet. The office of Prime Minister has come into existence as a result of a convention. The Prime Minister is the leader of the Cabinet. He presides over the meetings of the Cabinet and conducts its proceedings. He is the leader of the House of Commons. All principle announcements are made by him on the floor of the House. He is the source of communication between the Cabinet and the Queen. He has full control over foreign affairs and finances of the country. He has a lot of patronage in his hands. He is the chairman of various committees. In spite of all his powers, he is only first among equals and cannot behave like a dictator.

Q.14. Describe the position and functions of the Privy Council and the Judicial Committee of the Privy Council.

Ans: While the Government of the United Kingdom is carried on in .the name of the King, the Privy Council is the constitutional machine through which the executive orders of the King are transacted. The Privy Council has its origin in the Curia Regis of the Norman period. The King from amongst the feudal lords appointed the members of the Curia Regis. This body was meant to advice the King when its advice was sought. It powers increased during the reign of Norman Kings but at the same time the number of its members increased enormously and it became an unfit body for deliberations. Charles II, therefore; consulted some five close friends of his own, out of all the members of his body. Thus the famous Cabal Ministry came into existence, which is regarded as the mother of the present Cabinet. Although later developments placed all the executive functions in the hands of the Cabinet yet this body continued to be a medium to carry out the wishes of the Crown. It is no longer an advisory body since the Cabinet now performs these functions.

ITS COMPOSITION

The Privy Council at present consists of more than 300 members. The King or Queen who may appoint anybody as Privy Councillor on the advice of the Prime Minister appoints its members. All ministers—present and past, men of eminence in political life, distinguished scientists, litterateurs and artists, Archbishop, retired judges and other persons who have held administrative posts under British Government—are made Privy Councillors. The Privy Councillors enjoy lifelong tenure. A Privy Councillor is addressed as the Right Honourable.

FUNCTIONS

The Privy Council is a defunct body and hardly performs any function today. It meets in full only on occasions like Coronation of the King or the Queen. But in order to transact formal business to issue Orders-in-Council, a quorum of three persons is considered to be sufficient. As a matter of rule, three Cabinet Ministers including the Lord President of the Council meet and act on behalf of the Privy Council. The meetings are generally held at Buckingham Palace in the presence of the King or the Queen but his or her presence is not essential. The work of the Council is done in the name of the King-in Council. It may be noted that all executive orders passed by the Cabinet by way of delegated legislation and other orders relating to the colonies and dependencies and wartime orders are embodied in the Order-in Council.

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society. It has enlarged the power of the Congress. The supremacy of the judiciary over the executive and the legislature has led to the remark that the Government of U.S.A. is government by the judges.

10. Division of Powers: As the federal government requires a double set of government—that of center and those of states there must be a division of powers between the two parts. The Constitution specifies power of the federal government and leaves the rest for the States.

11. Popular Sovereignty: An important feature of the American system is that it emphasises the theory of popular sovereignty. Ultimate authority has been vested in the people. According to Madison, "The American system was based on that honourable determination which animates every votary of freedom, to rest our political experiments on the capacity of the mankind for self-government".

12. Republicanism: The U.S.A. is a republic with the President as the elected head-of the State. The Constitution derives its authority from the people. Moreover, the Constitution makes it binding upon every constituent State to have the republican form of government.

13. Presidential: The Constitution provides for the Presidential type of government in the U.S.A. All powers are vested in the President. Though the Constitution provides indirect election of the President but in practice his election has become direct. The President is not politically responsible to the Congress in the manner in which the executive is responsible to the legislature in England or India. He does not attend its sessions, nor initiates legislation directly, nor answers questions. The Congress cannot remove him during the term of his office, which is fixed for four years. On the other hand, the President cannot dissolve the Congress. The members of his Cabinet are neither members of the Congress nor answerable to it.

14. Dual Citizenship: The U.S. Constitution provides for dual citizenship for the people of the United States. An American is the citizen of the U.S.A. As also of the State wherein he or she is domiciled. It is in contrast with the idea of single citizenship as incorporated in the Constitution of India where every citizen irrespective of domicile is the Citizen of India alone.

15. Spoils System: This is an interesting feature of the American political system. The system is associated with the name of President Andrew Jackson. According to this system, when the new President takes over the charge of administration, appoints afresh all important officials of federal government. The entire administration of the previous President is streamlined. The system is known as 'Spoils System' because important jobs are distributed among the henchmen of the President or his Party without taking into account ability, experience or talents of the men appointed.

POINTS TO REMEMBER

The U.S. Constitution is written in form. It is rigid. It is federal in character with a weak center. It is based on 'separation of powers' with a system of checks and balances. It derives its authority from the people. Supremacy of the constitution is guaranteed through the doctrine of judicial review. It contains a Bill of Rights for the citizens. It provides for the Presidential type of government. The citizens of the United States enjoy dual citizenship.

Q.2. Discuss the various factors responsible for the evolution of the American Constitution with special emphasis on the role played by the conventions.

Ans: The original Constitution of the United States of America consists of seven Articles containing not more than seven thousand words. It was framed to satisfy the requirements of the original thirteen States with a small population living in the pastoral *cum* agricultural age. The constitution of 1789 embodied only general outlines of the framework of the federal government. But the present Constitution of the U.S.A. cannot be identified with the original constitutional document prepared by the Philadelphia Convention. Today it includes many rules and regulations, judicial interpretations and conventions etc., which affect the distribution and exercise of the sovereign powers of the State. It has, in fact, changed beyond recognition. The various factors, which have led to an all-round development of the American Constitution, may be summed up as follows:

1. Amendments: Though the process of amending the Constitution has been extremely slow yet it has led to its growth. There have been only 26 amendments to the Constitution during the last 200 years. The, first ten amendments guarantee to all Americans, religious freedom, freedom of speech, freedom of press, the right of trial by jury, the right to assemble peacefully for any purpose, to petition the government for a redress of grievances, and the right to bear arms. They give the people also security against unreasonable search and seizure of persons or property, and assure those charged with crimes of a fair public trial. Excessive bail may not be required, nor excessive fines imposed, nor cruel punishments inflicted. In the peacetime no soldier may be quartered in any house without the owner's permission. No person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation. According to the Ninth Amendment, the listing of certain rights in the Constitution is not to be construed as denial of other rights already retained by the people. In the immediate aftermath of the Civil War, and as a direct consequence of its outcome, three additional amendments were adopted which abolished slavery and opened the door of citizenship to former Negro slaves. The Fifteenth Amendment removed all barriers on voting on account of race, color, or previous condition of servitude. If became effective in 1870. The Sixteenth Amendment, ratified in 1913, gave the national government power to tax incomes. The Nineteenth Amendment, ratified in 1920, gave women the right to vote on the same basis as men. The Twenty-second Amendment, ratified in 1951, limited the office of the Presidency to 2 four-yearly terms. The Twenty-fifth Amendment, adopted in 1967, enabled the Vice-President to become Acting President if the President should become disabled, and gave the President authority to fill the Vice-Presidency, with Congressional assent, should that office become vacant. The Twenty-sixth Amendment granted the voting right at the age of eighteen.

(Note: All the amendments in detail are discussed under a separate Question.)

2. Law: The second factor responsible for the development of the American Constitution is the Law passed by the Congress. The framers of the Constitution prescribed only the general outlines of the federal government. The determination of details in regard to the organization and functioning of the government was left to the Congress. Naturally laws passed by the Congress have contributed more to the evolution of the constitution than the Twenty-six amendments. The constitution made provisions for the establishment of the Supreme Court, but its organization, tenure and salaries of the judges were left to be determined by the Congress. Similarly, the constitution prescribed the composition of the two Houses of Congress but the method of election and suffrage were left to be determined by the State legislatures. Electoral Act of 1887 regulated the election disputes. Original constitution is silent about organization of the administrative departments. The Congress, by law, determines their number, functions, organization etc. All these laws dealing with the organization and functioning of the government have expanded and enriched the constitution to a great extent.

3. Judicial Interpretations: Judicial decisions and interpretations have also played a major part in the evolution of the American Constitution. So great has been the role of the judiciary that some commentators of the American Constitution have named the Supreme Court

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as a continuous constitutional convention. Munro remarks, "One might almost say that it (constitution) undergoes some change every Monday when the Supreme Court hands down its decisions." The implied powers of the Congress owe their origin to the Supreme Court. The Supreme Court has given wide meaning to the words used in the constitution. The power of the national government to regulate inters State commerce; railways, telegraphy, aeroplanes and radio all owe their origin to decisions of the Supreme Court. The Supreme Court has strengthened the center at the cost of the States quite in keeping with the needs of the time.

4. Development by Executive: Powerful Presidents of the U.S.A. have also contributed a lot towards the growth of the American Constitution. Washington, Jackson, Lincoln and Roosevelt molded and developed the constitution by a vigorous use of their Presidential powers. As for example, President Washington created a Cabinet and began consulting it. Since then the Cabinet has because a regular organ of the U.S. Government.

5. Conventions: The conventions have played a magnificent role in the development of the Constitution of the United States. The conventions are not a peculiar feature of the British Constitution alone. The American Constitution is equally rich in this respect. The framers of the constitution only prepared a skeleton. The flesh has been added to it by the usages and conventions, which have grown up during the last 200 years. In the words of Beard, "A great revolutionary change in the American Constitution has not been brought about by amendments or statutes but by customs and conventions. The conventions have changed the very spirit of the constitution." Some of these conventions are given below:

1. The fathers of the constitution provided for an indirect election of the President. But by convention the election of the President has become more or less direct.
2. According to the constitution the Speaker of the House of Representatives should be chosen by the House itself. In reality he is the nominee of the majority party.
3. The system of Senatorial Courtesy according to which the Senate accepts the recommendations made by the President for the appointment of the federal officers, is the result of a convention. Similarly, the rule that a candidate for election to the House of Representatives should belong to the constituency, which he seeks to represent, is based on a convention.
4. The practice of keeping the leader of the majority party in the Senate informed about the progress of treaty-negotiations by the President is also the result of a convention.

The above description shows that conventions play a significant part in the working of the Constitution of the United States. But it must be remembered that the extent of conventional element in the American Constitution is much less than that in the British Constitution.

The American constitution is thus a living organism expanding and developing in different directions. In the words of Woodrow Wilson, "the original American Constitution is just like Magna Cart and it has sprouted out of a small seed into a big tree."

POINTS TO REMEMBER

The Constitution of America is a small document consisting of only 7 Articles and some 7,000 words. Later, the constitution was developed enormously by the addition of the amendments, laws passed by the Congress, judicial interpretations and conventions. Each of these factors played its part in the growth of the constitution. But the most vital role was *played by the development of conventions, which have practically transformed the spirit of the constitution.*

"The Constitution of the U.S.A. is the most completely federal Constitution in the world."

—C.F. Strong

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3– FEDERALISM OF THE U.S. CONSTITUTION

The original 13 Member States under an atmosphere characterized by jealousy, bitterness, suspicion and political fear framed the Constitution of the United States. The federation came into existence under the pressure of circumstances although the original member-States wished to maintain their political independence. The federation was thus a compromise between the centrifugal and centripetal tendencies. It was just out of fear that a weak Central Government was sought to be established by the Constitution. All possible efforts were made to protect the right of the Stated against the encroachment of the federal authority. Although the framers of the Constitution gave extremely limited authority to the federal government yet under the impact of new economic and political forces, the Centre has assumed enormous authority in various spheres originally exclude from its jurisdiction. The Supreme Court has come to its rescue and has jurisdiction. The Supreme Court has come to its rescue and has enhanced its authority through the doctrine of 'Implied Powers'

Q.3. Discuss the scheme of division of powers in the American Constitution. Account for the increase of powers of the federal government.

Ans: The United States Constitution is federal. Originally, it consisted of 13 States, now it contains 50 units. It was established through the centripetal process. The thirteen independent sovereign States surrendered some of their powers and created the Union (United States of America). Naturally enough, they surrendered as little powers as could be possible. The federal Government has, therefore, delegated and specified powers. All other powers not reserved to the federal government or to the people were vested in the States. The residuary powers thus lie with them. In this way the Constitution leaves a vast authority with the States. Woodrow Wilson pointed out that of a dozen great legislative measures carried through by the British Parliament in the 19th century, only two would have come within the scope of federal legislature in America (i.e., the Corn Laws and Abolition of Slavery). The Constitution contains three lists of subjects, namely, a list of what the Congress can do, a list of what the Congress cannot do and a list of what the States cannot do.

The Constitution (Art. 1, Sec, 8) enumerates 18 powers for the U.S. Congress. They include, among others, to impose and collect taxes and duties etc., foreign trade, inter State commerce, naturalisation, common defence and general welfare of the United States, coinage and weights and measures, promotion of science and other useful arts, Constitution of tribunals inferior to the Supreme Court, declaration of war, raising armies, and making all laws necessary for the execution of these powers.

The other two lists detail powers, which are forbidden to the Centre and the States respectively. Section 9 of Article 1 forbids the Federal Government from suspending a writ of *habeas corpus* or from passing *ex-post facto* laws; granting titles or nobility; passing laws affecting religious beliefs of the people in any way and abridging freedom of speech and of press. The States are forbidden from making any alliance or treaty with any foreign power, coinage and among other things, maintaining armies. The 10th Amendment provides that powers granted to the Centre and forbidden to the States, vest in the people themselves. These relate mostly to certain rights of the people, which no government can violate. The Constitution thus preserves the essential authority of the people in consistence with democratic principles.

The scheme of division of powers in the U.S. Constitution shows that the Suites enjoy all those powers which have not been given to the Federal Government and which have not been forbidden to the States. Such a system of division of powers is bound to make the Central Government weak since it enjoys jurisdiction over specified items only.

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GROWTH OF FEDERAL AUTHORITY

There is now an inherent tendency in the United States towards the increase of federal centralisation. At the time when the Constitution of U.S.A. was made participating states wished to retain the local independence as much as possible and thus they gave a limited number of powers to the newly created federal government. They only agreed to have a Union rather than unity. But under the impact of time and circumstances, the powers of the Federal government have increased beyond imagination.

The following factors have been responsible for the enormous increase in the federal authority.

1. Doctrine of Implied Powers: The Supreme Court has so interpreted the Constitution that the powers of the federal government have increased even at the cost of States. It developed the doctrine of *'Implied Powers'.* This doctrine enunciated mostly by Chief Justice Marshal of Supreme Court, provides that the Constitution not only enumerated certain powers for the centre, but also gave all those powers, which are implied in the enumerated ones. There have been several cases when the Supreme Court, in interpreting the Constitution, has helped the Centre through the application of the doctrine. A few examples may be taken to illustrate the application of this doctrine. The constitution empowers the national government to regulate commerce with foreign nations and among the several States. The Congress has derived from this clause of the constitution, the power to control all means of transport and communication. From the clause giving to Congress the power 'to promote general welfare', it has derived the authority to pass social legislation like old age insurance schemes and other laws of this nature. Again, through the powers of the Congress to impose and collect taxes and duties, the Congress got the authority to establish and control exclusively the Central Bank of United States. This is how the Federal Government has acquired much authority which was originally not granted to it by the constitution.

2. Amendments of the Constitution: Many amendments have increased the powers of the federal government. The fifteenth amendment gave the powers of judicial review to the Supreme Court over state legislation. The sixteenth amendment of the constitution authorised the Congress to levy and collect taxes on incomes of all kinds whereas the original constitution had prohibited the Central Government to impose direct taxes.

3. Physical, Economic and Social Changes: By far the most important factor responsible for the growth of federal authority is the change in physical, economic and social setting of United States. At the time of promulgation of the constitution, America was just a federation of 13 small states. But now it is a Union of 50 states with a huge extent of territory and enormous population. This growth in size, population together with complexity of social organisation has led to the great shift (of power in favour of National Government. The matters, which were once considered to be of local) importance has now assumed national character. The vast development of communication, trade, technology, rise of 'big business' and inter-state co-operation created problems which could not be tackled by states and could only be handled successfully by the National Government. People demanded services, which the states were either unable or unwilling to provide. Step by step the national government took over what the states would not do. Thus there has been a steady flow of authority to Washington, the seat of federal authority.

4. Role of Powerful Presidents: The powerful Presidents have issued rules and regulations in the exercise of their authority widening the federal government. Presidents like Lincoln, Washington, Roosevelt, and Wilson have exercised dictatorial powers. They have taken action even without any constitutional justification. President Lincoln declared war against Southern States on the question of slavery. Roosevelt's 'New Deal' policy has widened the control

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of Federal Government over subjects originally within State jurisdiction.

5. The Impact of the Civil War (1861-65). The issue of Centre-State relationship was effectively decided by the Civil War 1861-65, which gave a negative verdict against separatism, state autonomy and state loyalty.

6. Confidence in the National Government: The people of U.S.A. at all stages of their development have looked to the national Government for solving their problems. Their desire to make the country big and prosperous involved big efforts and big enterprise and all this evolved a big government. The economic crisis of 1931, for example, appreciably enhanced the prestige of the national government. The resources of the state proved absolutely inadequate to provide relief to 12 million unemployed in the country. During war, importance of Central Government is enhanced immeasurably. Prosecution of war needs planning and co-ordination. "In total war, there should be total power. As long as we live in a world where war is an ever-present possibility, the defence activities of the government will be many and varied, and they will impinge on all aspects of our lives." This leads to centralization pure and simple.

7. Federal Grants-in-Aid: Federal grants-in-aid are a prolific source of centralization. Grants-in-aid are the payments made by the national government to State and local governments for the support of welfare activities administered by States and their local bodies, e.g., housing, agriculture, education and various other like matters. State functions cannot now be compartmentalised. All state subjects are national in scope and though they are locally administered, yet must be standardised at high level by the Central Government. The centre gives the grants for the specified purpose and subject to conditions stipulated by Congress. It is a matter of common knowledge that one who gives money has a loud voice in calling the tune.

8. Defence of the country: The Constitution empowers the National Government to protect the country from external aggression and when necessary for waging war. The problem of common defence makes the government responsible for gearing up the entire life of the nation and when the country is in the midst of war, all out efforts must be made to win it. It means conscription of men, control of channels of production, transportation, distribution, and in fact, nearly every aspect of economic and social life in the country. When the war ceases, the government must tackle problems of demobilization and post-war reconstruction. All this leads to increase in authority of the federal Government.

9. Impact of World Situation: The centralising tendency in the American Constitutional System has been further strengthened by the international situation. World War II was responsible for enormous increase in the powers of the federal government. Post war cold war going on between the Communist Block and Capitalist bloc in world politics continues to strengthen the powers of the Central Government of America. According to D. White, "the most obvious giant pushing us towards the centre is the Russian bear."

This enormity in the growth of federal authority has led to the conclusion, that United States is no longer a federal polity. But it is an exaggeration to say that federalism in America is dead. It is an age when federation cannot exist without having a strong centre. Now everywhere, whether it is India or Canada or Russia or America, there is an irresistible tendency towards the development of what knows as co-operative federalism.

POINTS TO REMEMBER

The Constitution of the United States enumerates three lists of subjects, viz., a list of what the Congress can do, a list of what the Congress cannot do and a list of what the States cannot do. In the scheme of distribution of powers, the federal government was sought to be very weak and the States were given a position of vantage. But the Supreme Court through the application *of the doctrine of 'Implied Powers' has considerably increased the powers of the Federal Government. Its powers have also increased through constitutional amendments and development of international relations of the United States.*

Q.4. Describe the process of the amendment of the Federal Constitution of the U.S.A. Examine critically the rigidity of the U.S. Constitution.

The fathers of the American Constitution were cautious to avoid all possibilities of capricious alterations in the Constitution.' *(Munro) In* the light of this statement, discuss nature of rigidity of the U.S. Constitution.

Ans: One of the essential features of federalism is the rigidity of the constitution. The U.S. Constitution fulfils this requirement to a remarkable degree. Article 5 of the Constitution lays down a very cumbersome and difficult procedure for its amendment. There are two methods by which amendments may be carried. They are as follows.

1. An Amendment may be proposed by two-thirds majority in each House of the Congress. It must be ratified by three-fourths of the total number of the States. The ratification may be done either by State legislatures or by special conventions held in the States for this purpose. The mode of ratification is to be determined by the Congress.
2. The States themselves may take the initiative in proposing amendments. If two-thirds of the State legislatures apply to the Congress for this purpose the Congress calls a Constitutional convention, which shall on the basis of the original recommendation, propose the amendment. These amendments must be ratified by 3/4th of all the States either through their legislatures or at specially called conventions. The mode of ratification is to be determined by the Congress.

Out of 27 amendments which have been carried so far, all but one have been initiated by the Congress and ratified by the State legislatures, i.e., Congress proposed them and submitted them for ratification to the State Legislatures: Only the 21st Amendment which repealed the 18th Amendment (the 18th amendment had enforced prohibition) was ratified by conventions in the States.

SOME PECULIARITIES OF AMENDMENT PROCEDURE

(a) The constitution did not fix any time limit for ratifying the constitutional amendments. This results in a great delay in their passage and implementation. One State, for example, ratified a proposal after 80 years. But now the Congress by its resolution can place a time limit on ratification. As for example, in the case of 18th, 20th and 21st amendments, it clearly laid down that the amendment would be lost if not ratified by the required number of States within 7 years.

(b) If a State once ratifies an amendment it cannot go back. But if it has rejected once, it can ratify it later provided it feels like revising its decision.

(c) The Constitution prescribes that an amendment may be proposed by the Congress by two-thirds majority in each of its Houses. But it is silent as to whether two-thirds majority means the majority of total membership or of members present and voting. As a matter of practice, it is the latter scheme, which prevails.

(d) There are, moreover, certain provisions, which cannot be amended. For example, the right of every State to equal representation on the Senate cannot be taken away without the consent of the State concerned. Also no State can be split up into two or more or any State merged with it, without the prior consent of the legislature of the State concerned.

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CRITICISM OF AMENDING PROCESS

1. The system of amending the U.S. constitution is extremely rigid. Between 1789 and 1965 nearly 1900 proposals of constitutional amendment were moved but only 25 were finally accepted. This shows that the U.S. Constitution lacks the virtue of adaptability with the change of time.
2. Undue rigidity sometimes hampers the path of democratic forces. If, for example, 38 States, which may have an absolute majority of the American population, ratify an amendment the opposition of one small State can stop it from being effective. In other words, thirteen small States with, say one-tenth of the total population may decide to oppose a proposal for constitutional amendment and may thus prevent nine-tenth of the people from effecting any change in the constitution. Thus the U.S. Constitution envisages consent of the States and not the majority of population. This is considered to be against the spirit of democracy. The minority shall defeat the majority.
3. The procedure for amendment is extremely difficult. It is not even easily possible to secure two-thirds majority in the Congress in favour of a constitutional amendment. Out of all the proposals made for constitutional amendment, two-thirds majority in the Congress could pass only 29. Out of these 29 proposals, the required number of States ratified only 25. It has, therefore, been suggested that only majority vote in the Congress and subsequent ratification by two-thirds of the States should be made necessary for constitutional amendments. But this suggestion has not been seriously considered.

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Despite much of criticism, the American people have proved to be flexible, and have changed the Constitution if it was demanded by the times. Between 1913 and 1933 alone, for example, 6 major amendments were effected. In the words of Prof. Munro, "U.S. Constitution is a *living* organism. The rigidity has only been provided as the fathers of the Constitution were cautious to avoid all possibilities of capricious changes in the constitution."

POINTS TO REMEMBER

The U.S. Constitution is very rigid. It can be amended by two different methods—but in both of them it requires ratification by at least three fourths of the number of States. Two-third majority in both, the House of the Congress, may propose the amendment and then it must be ratified by three fourths of the States. The States themselves may propose an amendment if two-thirds of them apply to the Congress for this purpose. The method of Constitutional amendment in the U.S.A. is so very difficult that during the last 200 years, only 26 amendments could be carried.

Q.5. What are the various Amendments made to the American Constitution? What are their effects?

Ans: The Constitution of U.S.A. is very rigid in character and since its promulgation till today, only 26 amendments have been made which may be listed as follows:

The first amendment guarantees freedoms of religious worship, speech and press, and the rights of peaceful assembly, and of petitioning the Government.

The Second Amendment guarantees the people the right to have weapons.

The Third Amendment guarantees that troops shall not be quartered in private homes without the owners' consent.

The Fourth Amendment guarantees that there shall be no search or seizure of person, houses, goods or papers without a search warrant.

The Fifth Amendment forbids the trial of any person for a major crime, except after indictment by a grand jury: prohibits repeated trials for the same offence; forbids punishment without due process of law; and provides that an accused person may not be compelled to testify against himself. Nor may property be taken for public use except at a fair price.

The Sixth Amendment orders speedy and public trial of persons charged with criminal offences in the district where the crime was committed; requires trial by an un-biased jury after a plain statement of the accusation: guarantees counsel for the accused and provides that witnesses for the accused shall be compelled to attend the trial and that all witnesses shall testify in the presence of the accused.

The Seventh Amendment provides a right to trial by jury for law suits involving anything valued at more than twenty dollars. The Eighth Amendment forbids setting of excessive bail for persons involved in criminal cases. It also prohibits the levy of excessive fines and cruel punishment. The Ninth Amendment states that rights not mentioned in the constitution shall continue to be enjoyed by the people. The Tenth Amendment provides that powers not delegated to the federal government are to be exercised by the States or the people. These amendments provided for a Bill of Rights for the American people. The Eleventh, and Twelfth Amendments removed some-ambiguities in the original Constitution. The Thirteenth Amendment abolished slavery. The Fourteenth Amendment guarantees individual liberty against state governments. The Fifteenth Amendment extends the right to vote to all the adults of either sex irrespective of race, color or previous condition of servitude. The Sixteenth Amendment authorizes the Congress to pass appropriate law for imposing income tax, the proceeds of which are not to be distributed among the states. The Seventeenth Amendment provides that Senate of the United States shall be composed of 2 Senators from each state elected by the people for a period of six years. In case of a vacancy, the executive authority of the state concerned shall nominate a person as Senator till the people duly elect somebody.

The Eighteenth Amendment prohibited the sale of intoxicating beverages in the United States and subsequently repealed by the Twenty-first Amendment.

The Nineteenth Amendment gives women the right to vote. The Twentieth Amendment changed the dates of the beginning of the sessions of the Congress and of assumption of office by the President. The Twenty-first Amendment repealed the Eighteenth Amendment but prohibited the transportation of liquor into a state against its will. The Twenty-second Amendment limits the President to two terms of office. It further provides that a Vice-President or other successor to the Presidency may not be elected more than once if he has served more than two years of the term to which he succeeded.

The Twenty-third Amendment gives the people of the District of Columbia the right to vote for President and Vice-President.

The Twenty-fourth Amendment prohibits any poll tax *as a* prerequisite for voting in a national election.

The Twenty-fifth Amendment, ratified on February 10, 1967, designates the Vice-President *as* Acting President when the President is physically or mentally unable to carry on the duties of his office. It also authorizes the President to nominate a Vice-President, with Congressional assent, if the Vice Presidency becomes vacant.

The Twenty-Sixth Amendment ratified on June 30, 1971 reduced the voting age at Eighteen.

The Twenty-Seventh Ratified May 7, 1992, Now law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

It is of the greatest significance that out of twenty-six amendments, no less than eighteen provide for guarantees of civil or political liberties. Two others, the Eighteenth and Twenty-first cancel each other. Only six have been deemed necessary to make fundamental changes in the scheme of organization and powers drafted in Philadelphia by the Constitutional Convention.

Q.6. Discuss the doctrine of Separation of Powers as incorporated in the American Constitution. How has the Separation been affected by the system of 'Checks and Balances?

Ans: The principle of 'Separation of Powers' is one of the most important features of the American Constitution. The constitution clearly states that all legislative, executive and judicial powers are vested in the Congress, the President and the Supreme Court respectively. There is no other constitution in which the demarcation of the three wings of administration is so clear. In India, for example, all executive power of the Union is vested in the President, but the Parliament consists of the President and two Houses. This shows that the executive has been associated with the legislature in a very active manner. Similarly, in England Parliament is sovereign in every respect and the executive is subordinate to it. However, in the United States each of the three wings is separate and distinct without being dependent upon the other. It is said that the fathers of the American Constitution were deeply impressed by the theory of 'Separation of Powers' as propounded by Montesquieu. In their attempt to make three wings as separate as possible, they have made each one of them independent from each other. The President, for example, has a fixed tenure and is not responsible to the Congress. The Congress is independent of the President since it cannot be prorogued or dissolved by him. The federal judiciary is also independent of both the executive and the legislature. No judge of the Supreme Court can be removed except by a very difficult procedure of impeachment. Thus, as Finer points out, the "American Constitution was consciously and elaborately made an essay on the separation of powers and is today the most important polity in the world which operates upon that principle."

CHECKS AND BALANCES

However, the American Constitution has not produced a 'clean severance' of the three organs of the government. To weaken the authority of government further, the fathers of the Constitution introduced checks *and balances,* so that one organ obstructs the other. They possibly apprehended that an organ of the government, left to it completely, might degenerate and misuse its power, thus becoming tyrannical and oppressive. The constitution has, therefore, provided for a system of internal *checks and balances.* The Senate in the matter of making appointments to high offices, for example, controls the executive. It is laid down that the Senate must ratify all high appointments made by the President. Again, it is the Senate, which ratifies all international treaties made by the President. This power was effectively used in 1919 when the Senate refused to ratify the Treaty of Versailles, which had been accepted by the President, Woodrow Wilson. The Senate, an important part of the U.S. Congress, thus controls the internal administration through its power of ratifying all treaties, and agreements to be made with foreign States. The Senate moreover, is the court of impeachment against the President and other high officials of the United States. The President, in turn, controls the Congress in the sense that all Bills passed by the Congress must be submitted to him for his signature. He may veto a Bill, in which case the Congress can override it by re-passing the Bill with 2/3rd majority voting separately in the two Houses. He can exercise his *pocket veto* during the last ten days of the session of the Congress. Again, both the President and the Congress have certain checks on the judiciary. The President appoints the judges of the Supreme Court in consultation with the Senate. The Congress, subject to certain constitutional restrictions, determines their salaries etc.. The judiciary in turn exercises

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its control over the executive and the legislature through its power of judicial veto. It can veto the laws passed by the Congress and the orders issued by the executive if they are found to be at variance with the spirit of the constitution. The Supreme Court sets the framework, both negatively and positively, within which the government works.

Thus we see that the principle of separation of powers has been considerably marred in actual practice by the principle of *checks and balances..* These two principles pervade the American political system from top to bottom. According to Finer, the problems that have arisen as a result of this in the United States, have been very obstinate and have frustrated the modern social will. In his 'American Government and Politics', Charles Beared states, "By the time a proposed law runs the gauntlet of all these independent agencies of government, the passions of those who support it are likely to be cooled and the will of majority tempered by much reflection.

But there are others who regard this system of checks and balances as a necessary corollary to the principle of separation of powers. There can never be a complete separation if administration is to be run smoothly. They say that in the American system too the ultimate power of the people does prevail. According to Lord Bryce, "The ultimate fountain of power, popular sovereignty, always flows full and strong, swelling up from its deep source, but it is thereafter diverted into many channels each of which is so confined by skillfully constructed embankments that it cannot overflow, the watchful hand of the judiciary being ready to mend the bank at any point where the stream threatens to break through."

POINTS TO REMEMBER

The principle of separation of powers is one of the most important features of the American Constitution. The constitution establishes three separate and distinct organs of government. The executive functions are vested in the President. The Congress performs the law-making functions and the federal judiciary performs the judicial functions. In order to avoid the rigour of the 'Separation of Powers' the Constitution introduces a system of 'Checks and Balances.' The power of one organs is made a check upon the others.

PROBABLE QUESTIONS WITH HINTS (CSS & LLB –I)

Q. 'If power is not to be abused then it is necessary in the nature of things that power be made a check to power'. In the light of this statement justify the system of checks and balances as introduced in the U.S. Constitution.

Q. 'The outstanding contrast between the Constitution of England and the U.S.A. is the great extent to which in the U.S.A. the legislature, the executive and the judiciary are independent of one another. Elucidate.

[For answer, refer to the question dealing with the separation of powers checks and balances.]

"Our republican form of government with its elective presidency was born in the declining period of divine-right absolutism." —Willis G Swartz "No president-dare violate social decorum as European sovereigns have so often done. If he did so, he would be the first to suffer." —James Bryce "The presidency is more than executive responsibility. It is the inspiring symbol of all that is highest in America's purpose and ideals." **—Herbert Hoover**

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4- THE UNITED STATES EXECUTIVE

The United States Constitution vests executive powers in the hands of the individual, the President of the United States of America. His powers are so enormous, wide and overwhelming that he has been described as 'the foremost ruler in the world'. The office of American President has been organised on the basis of non-Parliamentary or Presidential type of government. There are Presidents in other countries too. But their authority is greatly limited by the powers of the legislatures. They are constitutional or nominal heads of their States. The Indian President, for example, cannot afford to go against the advice of the Council of Ministers, which is responsible to the Parliament. In the U.S.A., on the other hand, the President and his Cabinet are not answerable to the Legislature. The President of the U.S.A. is supreme in the executive sphere, making due allowance for some devices of internal checks and balances. Any Cabinet does not bind down the American President. He chooses his own Cabinet, which is at best his personal team of advisors. It has been rightly characterised as the 'President's Family' and head of the family, the President inevitably dominates them.

Quite a number of factors are responsible for this state of affairs. The constitution is clear and unequivocal in giving all executive powers to the President. Secondly, he is directly elected by the people and as such enjoys greater measure of popular support.

Indeed the American Constitution has made the President a real executive head rather than a titular one, as is the case in Parliamentary governments.

Q. 7. How is the President of the United States of America elected? Explain the difference in theory and practice regarding the election of the President. What is the position regarding his re-eligibility? How is he impeached?

Ans: The constitution provides for indirect election of the American President. The President is elected constitutionally, by an electoral college consisting of as many "Presidential Electors" as is the number of members in both houses of the Congress, i.e., 538 (438 present number of members in the House of Representative in 1988 and 100 members in the Senate). This Electoral College is constituted in each State and consists of as many members as each State has in the Congress, i.e., both in the House of Representatives and the Senate. Since each State has 2 members in the Senate, it means that number of Presidential Electors in each State is equal to the numbers of its members in the House of Representatives plus 2. This means that a big state like the state of New York has 43 electoral votes (equal to its 41 members in the House of Representatives plus 2 in the Senate) and a small state like the state of Delaware has only 3 (equal to its 1 member in the House and 2 in the Senate). The winner of the Presidential election in a state will receive all of its elector votes on 'winner-take-all basis.' The method of electing the Presidential Electors in each State has been left to be determined directly by the State concerned. Originally they were elected by the State legislatures, but now they are elected directly by the people. The Presidential Electors meet in each State and cast their votes on the day fixed for Presidential election. There are thus 50 local contests for Presidency. It is the sum of these contests, which provides the actual result.

The American political system moves according to calendar pattern. The Presidential Electors are elected on the Tuesday after the first Monday in November of every leap year. These electors meet in the capital of each State on the first Monday after the second Wednesday in December, and record their votes for the Presidential candidates. A certificate of election is then sent to the Chairman of the Senate by each state. On 6th January, the Congress meets in a joint session, where votes are counted. The person securing an absolute majority of votes is declared elected. In other words in counting the majority of votes, the majority of total votes is considered,

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and not simple majority. The new President is sworn into office on January 20. In case no candidate secures the required majority of votes, the House of Representatives elects one person from amongst the first three candidates, securing the highest number of votes. In such a case, each State has one vote irrespective of the number of representatives in the House. If this attempt also fails, then after 4th March, the Vice-President automatically succeeds to the Presidential office.

Thus we see that the constitution has prescribed the method of election of the President with great precision. In the opinion of Hamilton, this process of election "affords a moral certainty that the office of the President will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications."

DIRECT ELECTION IN PRACTICE

Although the U.S. Constitution prescribes a system of indirect election, yet in practice election of the President has become almost direct. The change has been brought about by the growth of powerful political parties in America. Months before the date of Presidential election, the major political parties had their national conventions and nominate their Presidential candidates. The parties in each State, then, nominate their own candidates for the Presidential Electoral College. The ballot papers are so printed that by one cross, a voter can vote for the whole list of Presidential electors put up by a particular party of his choice. This victory of a particular party in the election of Presidential electors means the election of the party's candidate to the Presidentship. The formal election in each State and counting of votes by the Congress, are conducted just as a necessary constitutional formality. Thus to all intents and purposes, the Presidential election in the United States has become direct. The country knows weeks before the actual date of election as to who is going to be elected. The voters in the States do not, in fact, cast vote for the Presidential Electors, but they cast a direct vote in favour of Presidential candidates whose names are already known to them. The election of the Electoral College is just a formality. If the election of this intermediary body were to be excluded, the same result would accrue. Thus with the growth of strong political parties, the powers of electing the President has been actually transferred to the people although the framers of the constitution wished it otherwise.

QUALIFICATIONS

The Constitution provides that a candidate for Presidency must fulfil the following conditions:

- (a) He must be a natural born citizen of the United States.
- (b) He must not be less than 35 years of age.
- (c) He must have lived in the U.S.A. for not less than 14 years.

In practice the qualifications for Presidential candidate are severer than prescribed for. As a matter of rule, the candidates for Presidency are drawn from amongst the Senators, Governors of States, Cabinet ministers or important officials in the previous administration.

EMOLUMENTS

The salary of the President originally was $25,000 a year. It has been revised from time to time and now it stands at $1,00,000 a year apart from various other allowances and privileges. Emoluments and allowances of the President cannot be reduced during the course of his office. He is entitled to the use of free residential accommodations known as the White House in Washington.

TENURE AND RE-ELIGIBILITY

The President of the United States holds office for 4 years. The constitution, originally did not put any restriction on the re-election of a President. George Washington, the first President, was elected twice but he refused to contest election for the third term. Since then a convention had been developed forbidding the reelection of a President for more than two terms. The convention was scrupulously observed for a long time but it was violated during war years when President Roosevelt was re-elected for the third and fourth terms in 1940 and 1944. However, by the 22nd Amendment, which was ratified by the required number of States in 1951, no person shall be elected to the office of President for more than two terms. It means that normally a person cannot be re-elected for the third time after the completion of two terms totaling 8 years. But if the President dies when 2 or more than 2 years of his term are over, the Vice-President succeeding him will have two more chances of contesting election. But if the Vice President succeeds to the office when there are more than 2 years to go till the term expires, he will get only one More chance because the maximum term that can be enjoyed by any President is now fixed at 10 years. This is in contrast with the Indian practice where the President may be re-elected for any number of times he likes.

THE SUCCESSION

The original constitution is silent as to who shall succeed to the Presidency in case both President and Vice-President die or their offices fall vacant on account of resignation or disability or removal. The 25th Amendment ratified on Feb. 1967 designates the Vice-President as Acting President when the President is physically or mentally unable to carry on the duties of his office. It also authorises the President to nominate a Vice-President with the consent of the Congress if the office of the Vice-President falls vacant. The succession to the Presidency is as follows.

If the President dies, the Vice-President becomes President. If the President becomes disabled, the Vice-President becomes, Acting President during the disability. When the Vice-Presidency is vacant, the President may nominate a Vice-President, with confirmation by the Congress. Next to the Vice-President, in the line of Presidential succession is the speaker of the U.S. House of Representatives followed by President pro-tempore of the U.S. Senate, then the Secretary of State followed by other members of the Cabinet.

IMPEACHMENT

The President may be removed from office before the expiry of his normal term through impeachment. The House of Representatives adopts by resolution, articles of impeachment charging the President with certain high crimes and chooses leaders to direct the prosecution before the Senate, which acts as a judicial tribunal for impeachment. Its meeting is then presided over by the Chief Justice of the Supreme Court. The Senate may convict the President by two third majority of its members present and voting. The penalty cannot extend more than the removal of the President from office and disqualification to hold any office of trust and responsibility under the United States. The method or impeachment is not an easy one. During the long constitutional history of the U.S.A. only once in 1868, President Johnson was subjected to the process of impeachment but impeachment could not be carried through for want of a required majority in the Senate.

POINTS TO REMEMBER

The U.S. Constitution provides for indirect election of the President. He is to be elected by an Electoral College consisting of as many members as there are in the Congress. Each State elects Presidential Electors equal to the number of its representatives in the Congress. A candidate securing absolute majority of votes is declared elected, failing which the House of

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Representatives elects one from amongst the first three candidates securing the highest votes. Although the constitution provides for indirect election yet in practice it has become direct on account of the growth of strong political parties. The President may be removed from the office before the expiry of his normal term through impeachment. The House of Representatives prefers the charge against the President and Senate convicts him by its two-thirds majority.

Q.8. Discuss the powers and position of the American President.

Q. The President of the United States governs but does not reign. (Sir Henry Maine) Elucidate.

Ans: It is often remarked that the President of the United States wields the largest amount of authority ever wielded by anyone in a democracy. Lord Bryce regards the American Presidency as the greatest office in the world. Haskin declares that the President of the United States is the foremost ruler in the world. He enjoys real and effective powers as contrasted with the powers of the King or Queen of England or the President of the Indian Republic.

FINER REMARKS

"The Constitution intended that the executive should be more than a mere executive: it very considerably modified the pure idea of the separation of powers. He has become a very active legislative leader as well as an executive."

All these remarks are correct in their assertions that the powers of the American President have increased enormously much against the spirit of the original Constitution. The following are the factors responsible for the enhancement of the powers of the American Presidents:

(a) In the *first* place, the original constitution confers certain powers and privileges.

(b) In the Second place, the Supreme Court enhanced his authority in all those cases in which the constitution was not clear. As for example, the constitution clearly prescribed the method of making appointments to various federal offices but was silent about the mode of their removal. The power of removal of all federal officials was then vested in the President by the decisions of the Supreme Court. Then the constitution authorised the Congress to declare war, but power to terminate war was not clearly vested in any part of the federal government. By the verdict of the Supreme Court, this power too was vested in the President.

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(c) A substantial part of Presidential powers has been derived from the statutes of the Congress assigning certain powers and responsibilities to him either directly or through implication. The Congress generally passes laws in broad outlines and details therein are left to be filled in the executive orders of the President. The Congress may also bestow upon him the exercise of wide discretionary powers. As for example, in 1933, the Congress vested in the President the discretionary powers to reduce gold content of the dollar etc.

(d) The powers of the President have also been increased through conventions and usages. As for example, the convention of Senatorial Courtesy with respect to appointments has virtually placed in the hands of the President unfettered powers regarding all appointments.

(e) Lastly, the powers of the President increase enormously during emergencies. The President, for example, had almost dictatorial powers during the 2nd World War and post-war period.

The President of America now enjoys extensive executive, legislative, financial and judicial powers, which may be discussed as follows:

EXECUTIVE POWERS OF THE PRESIDENT

1. Chief Administrator. The President is the head of the national administration. All executive action of the Republic is taken in his name. He is responsible for the enforcement of the federal laws and treaties with foreign States throughout the country. He sees to the implementation of the decisions of the courts and enforces the constitution and laws of the country. For the performance of these functions, he sends directions to the heads of the various departments. In the discharge of his executive functions, his own cabinet the members of which are the heads of the various departments assists him. The President appoints the ministers and they remain in office so long as he is pleased with their work. The Cabinet has been described as the President's family and he can override their decisions whenever he likes.

2. Commander-in-Chief. The President is the Supreme Commander of the armed forces of the United States. As such he is responsible for the defence of the country. He appoints military officers with the advice and consent of the Senate and can remove them at will. Although the power to declare war vests in Congress yet the President can make war unavoidable and necessary by his conduct in the administration. As for example, President Truman took 'Police Action in Korea without authorization by the Congress. During war, President's military powers increase enormously. He becomes the sole incharge of war operations. During World War II, President Roosevelt was given almost a blank cheque to conduct war on the part of the United States. He became a sort of constitutional dictator.

3. Dictator of Foreign Relations. The President represents the U.S.A. in foreign relation. He formulates the foreign policy of the United States. He appoints all diplomatic representatives of the U.S.A. to foreign States with the consent of the Senate. He receives the foreign diplomats accredited to the U.S.A. He can negotiate treaties and agreement with foreign States in his discretion. But all treaties with foreign States must be ratified by two-thirds majority of the Senate. This is no doubt a limitation on his authority regarding the conduct of foreign relations. But the President is not to face any difficulty if majority in the Senate belongs to his party. The President is however, placed in a difficult position when majority of the Senate is hostile to him. The hostile Senate, for example, foiled President Wilson's efforts regarding the organisation of the League of Nations. The fact of the matter is that the President has position of vantage in the conduct of foreign relations of the U.S.A. since he is placed in a key position. He has unfettered freedom to negotiate treaties. It is only in the final stage that the treaties are placed before the Senate. Sometimes, it becomes difficult for the Senate to reject them at the final stage. Then the President can enter into executive agreements with foreign Stages, which do not require ratification by the Senate. President Roosevelt and Taft exercised this power freely. These agreements are no less important than others. The President does not declare the war at his own but he has the exclusive right to terminate hostilities. Further, the President has sole authority to extend recognition to a new foreign State. It was according to this right that President Roosevelt accorded recognition to the Soviet Government in 1933. It is again on account of the willful policy of Presidents Truman, Eisenhower and Kennedy that the Communist government of China had not been recognised by America for long.

All these facts clearly show that the President of the United States is the dictator of foreign relations. Washington, the first President, proclaimed the policy of 'American Neutrality' in 1793. President Munro enunciated the famous 'Munro Doctrine'. President Wilson and Roosevelt steered the State during the first and second world wars respectively. President Truman propounded his 'Truman Doctrine'. President Kennedy dictated American relations with full vigour and force. President Reagan enunciated the theory of "Constructive engagement" in Africa.

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4. Appointments. The President makes a large number of appointments in the federal services. The power of making appointments is the most important and effective power in the hands of the President: It enables the President to command the allegiance of a huge number of federal officers and secure their support for implementation of his policy.

There are two categories of federal Services, i.e., 'Superior Services' and 'Inferior Services'. The President with the consent of the Senate appoints Superior Services and the President alone, according to civil service rules, appoints members of the 'Inferior Services'. The officers belonging to superior category number about 1600 and tenure of service is generally four years coinciding with the Presidential term. Out of these services, the Senate without any objection ratifies certain appointments even if the majority in the Senate is against the President. For instance, the Senate would not interfere in the President's choice regarding the appointments of his own Cabinet, i.e., heads of the federal departments, Diplomatic representatives, military and naval appointments, especially during war. In all other appointments, the Senate exercises its power to reject or accept President's nominations. The President, however, has no difficulty in this connection if his own party has majority in the Senate. The President according to Convention, commonly known, appoints a number of services especially of local nature *as Senatorial Courtesy:* The Senate usually ratifies an appointment of this nature if the Senator from the State in which the appointment is made, approves of it. The President can also evade the consent of the Senate in making appointments to higher offices if he so desires. He may fill a vacancy temporarily during the recess of the Senate. It is to be submitted to the Senate when it comes into session but in spite of objection by the Senate, the appointment may hold good till the end of the session. And the President may reappoint the same person after the end of session if at all removed during session. Above all, it may be noted that the President has the sole right to remove federal officials from services. The President, however, cannot remove judges of the federal judiciary and members of various boards and commissions appointed under civil service rules.

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HIS LEGISLATIVE POWERS

Consistent with the theory of Separation of Powers, the constitution confers upon the President a limited legislative authority. The President does not possess the authority to summon, prorogue and dissolve the Congress. He cannot initiate any Bill directly in the Congress. The President, unlike the British or Indian Prime Minister, is not the leader of the majority party in the House. He has no direct control over the legislature whatsoever. The Congress is the real law-making body. The President can persuade and request the Congress for enactment of a particular law but he cannot threaten it as is possible with the British Prime Minister. The Congress may make laws against the wishes of the President, and he must execute them. The position, however, is not so desperate as it appears to be. During the course of time, the President has acquired a vital share in legislation. He has virtually become the 'chief legislator' in practice. Some of his legislative powers may be summed up *as* follows:

1. Veto Power. All Bills passed by the Congress must be referred to the President for his final approval. The President can deal with them in three different ways:

(a) He may give his assent to a Bill referred to him and the Bill will become an Act.

(b) He may reserve the Bill with him in which case it becomes a law at the expiry of ten days without his signatures provided the Congress is still in session. The Bill in such a case is killed if the Congress adjourns before the expiry of ten days. This is known as *Pocket Veto.*

(c) He may reject a Bill and may return it to the House with or without his

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amendments. In such a case, the Congress by its two-thirds majority in each House may repass the Bill and then it will be obligatory on the part of the President to give his assent.

The facts given above clearly show that the President has an effective role in law making. He enjoys absolute veto during the last ten days of the session of the Congress. It is interesting to note that towards the end of a session, the Congress passes numerous Bills and resolutions in order to clear up its arrears. A considerable number of last minute Bills can thus be killed by the President if he is against them and the fact is that the various Presidents have frequently used this power. Otherwise too a Bill rejected by the President must be re-passed by two-thirds majority of Congress in each House. This much majority in the Congress is not always available in favour of a particular Bill. The result is that most of the Bills rejected by the President are totally killed. Even the President may check the enactment of a particular legislation by giving a threat of his direct veto in advance.

2. Messages. The President may send messages proposing some legislative measures. As the messages come from the highest functionary of the State, the Congress cannot easily ignore these. President's messages stir the nation and it is one great public document, which is widely read and discussed. In fact, many laws owe their origin to the Presidential messages. The famous 'Munro Doctrine' enunciated by President Munro was transmitted to the Congress through a message. He reports to the Congress on the State of the Union and on problems, which he believes requires immediate action on the part of the Congress. He being the nation's principal spokesman, the Congress cannot ignore such messages. President Roosevelt often used these methods. He got the New Deal Programme accepted from the Congress by sending a message to the Congress saying it must be passed before it adjourns.

3. Special Sessions. The President has the right to convene special sessions of the Congress. All-important laws were passed in 1913 in special sessions convened according to the wishes of President Wilson. The practice of convening special session of the Congress was very common previously. But under the new Calendar introduced by the Twentieth Amendment, the need of special session has become less because the interval between regular sessions has been lessened.

4. Patronage. The President has extensive patronage in his hands. He makes a large number of appointments in the federal services. The Senators and Representatives always want to win the President's favour in order to secure jobs for their supporters and friends. The Presidents of the United States have often made bargains with members of the Congress to get their proposals for legislation passed by them.

5. Appeal to Public Opinion. The President is not only the head of the Republic but also the leader of the nation. His office carries an inherent respect. The nation listens to him with attention. Whenever he finds that the Congress is pitched against him he can make direct appeal to the nation, and may create public opinion against his opponents in the Congress. There are instances when this method was effectively used by the President to put the Congress on the right errand.

6. Personal Influence. The President at the dinner table discusses most of the legislative programme of the Congress with the prominent party leaders in the Congress. The President, in fact, experiences no difficulty if his party has a majority in the Congress.

7. Delegated Legislation. In addition to an immense influence exercised by the President on the Congress, he can legislate on his own authority as well. He has the power to make rules and regulations in the form of executive orders. In most cases, the Congress makes laws in general outlines. The details are left to be filled in by the executive. The rules and regulations

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thus made have the force of law. This is known as delegated legislation or rule-making power. This power has increased immensely during recent years. President Roosevelt is supposed to have exercised this power extensively. He is said to have issue 3,703 executive orders during his Presidential career prior to 1941. During the same period the Congress passed only 4,553 laws.

HIS FINANCIAL POWERS

Although the control over federal finances has been vested in the Congress yet in actual practice, the President directs and controls finance. It is under the direct supervision of he President that the Budget is prepared. It is placed before the Congress, which can amend it in any way. But the general practice shows that the Budget is passed as it is. Very few of the Congress understand the technicalities involved in the Budget and d it is difficult to amend it on account of its niceties. The President is thus the general manager of the financial affairs of the government.

HIS JUDICIAL POWERS

Like all other chief executive heads, the President of the United States enjoys the power to grant pardon, reprieve or amnesty to all offenders convicted for the breach of federal laws except those impeached by the Senate. He cannot grant pardon or reprieve for punishment under State laws. The President appoints the judges of the Supreme Court with the consent of the Senate. Thus he enjoys some judicial patronage.

GENERAL ESTIMATE OF PRESIDENT'S POWERS AND SHADOW POSITION

A perusal of the powers of the U.S President proves beyond a shadow of doubt that he is one of the most powerful heads of the State. His powers are both real and effective unlike those of his prototype, the Indian President or the Queen of England. Here lies the justification of Sir Henry Maine's remarks that "the American President rules but does not reign". The fathers of the American Constitution took all the powers of the British King and gave them to the President only restraining them where they seemed to be excessive." This probably is the best explanation of the huge powers of the American President. In d the words of President Wilson himself, the nation as a whole has elected him and the nation is conscious that it has no other political spokesman. His is the only voice in all affairs. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces can easily over-power him. He is the representative of no constituency but of the whole nation. He is then the ceremonial head of the Republic and performance of any dignified function is incomplete without his presence or message. We may conclude with the remarks of Laski that "the President of the United States is both more or less than a king; he is both more or less than a Prime Minister. The more carefully his office is studied the more does its unique character appear".

POINTS TO REMEMBER

The American President is the most powerful head of the State. The constitution did not make him so powerful but later on through Congressional legislation, judicial decisions and development of conventions, he has assumed plentitude of powers.

His Executive Powers. *He conducts federal administration. He is Commander-in-Chief of the armed forces. He represents the United States in foreign relations and formulates the foreign policy. He makes a large number of appointments through senatorial courtesy.*

His Legislative Powers. *He has suspensive and pocket veto. He may send messages to the Congress, which embody his proposals for legislation. He may convene special sessions. He can influence the Congress through patronage. He may appeal to public*

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opinion. He has vast powers of delegated legislation.

His Financial Powers. *The Budget is prepared under his guidance. It is generally passed in original.*

His Judicial Powers. *He may grant pardon, reprieve and respite to all offenders convicted for breach of general laws. He shares in the appointment of the judges of the Supreme Court.*

Q. 9. Compare and contrast the powers and functions of the American President with those of the Indian or British Prime Minister. In what way does he differ from the Indian President?

Ans: According to Prof. Laski there is no foreign institution with which, "in any basic sense" the American Presidency may be compared. However, as the real executive heads of two countries the American President and the Indian Prime Minister may be contrasted in respect of their functions and powers. The Indian and the British Prime Ministers are basically similar in respect of position and powers. The contrast and comparison may be summed up *as* follows:

1. The American President's term of office is secure constitutionally. He cannot be removed before the expiry of a period of 4 years unless impeached earlier, by the Congress, but it is a very difficult and impracticable procedure. The Pakistan's Prime Minister, on the other hand, depends for his term upon the National Assembly. He continues in office as long as he enjoys the support of the majority party in the House. He must vacate his office, as soon *as* the confidence reposed in him by the majority is withdrawn.
2. The American President is directly elected by the people. The Indian Prime Minister is appointed by the President from the majority party in the House.
3. The President is the head of the State as well as of the government. But the Prime Minister is only the head of the government.
4. The President is not responsible to the legislature for his actions, whereas the Prime Minister is answerable and accountable to the National Assembly. The President, moreover, does not guide the course of legislation, nor is he a member of the Congress. The Prime Minister, on the other hand, is the leader of the House and actively steers the course of legislation.
5. The American President is helpless if the majority in the Congress is against him. He cannot get all the necessary legislation enacted. The Indian Prime Minister is always the leader of the majority party and can get the necessary legislation passed. In this respect he is more powerful than the American President.
6. The Prime Minister is only the head of his Cabinet. Since the Cabinet includes the leading party members with considerable backing, he cannot easily afford to ignore the advice of the Cabinet. The American President, on the other hand, is the boss and the Cabinet members are his subordinate assistants. He is the master of his Cabinet. The Cabinet members are mere advisers. The advisers only advice. The President makes the decisions alone.
7. The American President's power of making appointments is shared by the Senate. There is no such restraint on the powers of the Prime Minister. The Prime Minister makes all high appointments although formally they are made under the signatures of the President.
8. The American President derives all his powers from the constitution. The Prime Minister of India, on the other hand, derives his powers from constitutional

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conventions. Theoretically all power is vested in the President of India, and the prime Minister and his colleagues are appointed only to aid and advise the President.

AMERICAN AND INDIAN PRESIDENT

There is a great deal of difference between the American and Indian Presidents. The American President is the real executive, while the Indian President like the British Queen, is only a titular head.

The American President is both the head of the State and the government, while the Indian President is only the head of the State. The American President is elected more or less by the direct vote of the people. The Indian President's election is absolutely indirect. Whereas the American President holds office for 4 years and can seek re-election only once, the Indian President holds office for 5 years and can be reelected for any number of terms. The American President is not the part and parcel of the legislature, but the Indian President is a part of the legislature. The Indian Parliament consists of the President and two Houses. Moreover, the Indian President has to act normally on the advice of his Cabinet, which is selected from the legislature and is jointly and severally responsible to it. The Indian President is more powerful than the American President in one respect. The latter cannot interfere with the government in the States. But the Indian President can proclaim a state of emergency in any State and can assume to himself the administration of that State.

Both the Presidents, however, can be removed only by impeachment, though the methods of impeachment differ.

POINTS TO REMEMBER

There is a world of difference in the position and status of the American President and the Indian Prime Minister. The President of America is elected for a fixed term of 4 years whereas the term of the Indian Prime Minister's office depends upon the fluctuating will of the legislature. The President is both the head of the State and the government whereas the Prime Minister is only the head of the government. The President is elected by the direct vote of the people but the Prime Minister is only the nominee of the President of India. Whereas the President of America has no responsibility towards the legislature, the Prime Minister is answerable for his policies before the House. The American President has no control over the legislature but the Prime Minister is the leader of the House. The President can easily ignore the wishes of his Cabinet but the Prime Minister cannot easily do so. The Prime Minister has greater patronage in his hands. The President of America is both the constitutional and real head of the State but the Indian President is only a nominal head. Whereas the American President is elected directly, the Indian President is the indirect choice of the people.

Q.10. Discuss the working of 'Cabinet System' in the U.S.A. and compare it with that of India and England. The 'Cabinet' in the United States is characterised as the President's family. How far do you agree with this statement?

Ans: The American Constitution did not envisage any Cabinet to aid and, assist the President in the discharge of his functions. However, in course of time, separate departments of the government have been created, each of which is under the charge of a Secretary. These Secretaries are the principal advisers of the President. They are appointed by every President when he enters upon his office, and are usually his ardent supporters in the political field. They are not members of the Congress, nor are they responsible to it. They are the President's personal advisers, first and foremost. However, their appointment like all other high appointments is subject to the approval of the Senate; although the Senate does not stand in his way as a matter of his ability; to each according to his work" as laid down in article 6 of the constitution is well protected. Equality before law, freedom of religious belief, protection of home and hearth, privacy of correspondence etc. guaranteed as rights are fully entrenched. The freedoms of speech, press, assembly, association, procession and demonstration; although secured under article 35, are allowed only to a limited extent against insignificant organs of state but not against the party or top brass of government.

Q. 4 Name the highest organ of State authority in People's Republic of China. Also explain its composition, powers and functions.

"The National People's Congress is the highest organ of state authority in the People's Republic of China." Discuss.

Ans: Chapter 3 of the constitution of the People's Republic of China describes the organisation of the legislature. Article 57 declares the National People's Congress as the highest organ of State power. All the legislative powers of the People's Republic of China are vested in the National People's Congress. Unlike the Supreme Soviet of U.S.S.R. the National People's Congress is unicameral in composition. It consists of deputies directly elected by provinces, autonomous regions, municipalities directly under the central authority, the armed forces, and the Chinese residents abroad. Their number and the manner of their election are not given in the Constitution but are prescribed by electoral law.

TERM OF OFFICE

According to article 60, the National People's Congress is elected for a period of 4 years. But if the election becomes impossible because of exceptional circumstances, the term of office of the sitting congress may be extended until the first session of the new congress.

A Standing Committee convenes its session once a year. But an additional session may be convened whenever the Standing Committee thinks necessary or when one-fifth of the deputies demand it.

POWERS AND FUNCTIONS

The National People's Congress exercises all kinds of powers and covers all aspects of state functions. The Constitution of China is not based on the theory of separation of powers. It has legislative, executive, electoral, financial and constituent powers. It has the power to remove a high official of the State.

According to article 62 the National People's Congress has the power to amend the Constitution. It has also the powers to enact laws. Further, it supervises the enforcement of the Constitution. It elects the President and the Vice President of the Republic of China. It elects the President of Supreme People's Court. It has the power to decide on the choice of the Prime Minister of the state Council (Council of Ministers) upon the recommendation of the President of the People Republic. It also decides and approves the appointment of members of the States Council, Chairman of various Centre Commissions, Auditor General and Secretary General of State Council on the recommendations of the Premier.

It passes the State Budget and the financial report. It approves establishment of Provinces, autonomous regions and municipalities directly under the Central authority. It decides on questions of war and peace. It approves the state budget. It also examines and approves the plan for national development and it may also exercise such other functions and powers as the National People's Congress may think necessary.

According to article 63 the Congress has the power to remove the under mentioned from office:—

1. The President and Vice-President of the People's Republic of China.

2. The Premier and Vice-Premiers, State councillor and Heads of Commissions, Secretary-General of the State Council and the Auditor General.
3. The Chairman and other members of the Central Military Commission.
4. The President of Supreme People's Court.
5. The Procurator General.

The deputies of the Congress may ask questions to the State Council or to the Ministers and commissions of the State Council. They may ask any question concerning administration in order to elicit information.

PRIVILEGES

The deputies, as in other legislatures of the world, enjoy some privileges. They cannot be arrested or placed on trial without the consent of the Congress and if the Congress is not in session, of its Standing Committee. The deputies are subject to the supervision of units responsible for their election. And if the work of any deputy is not satisfactory the concerned unit according to the procedure prescribed by law may recall that deputy.

The above description of the powers and functions shows that the Congress is a very powerful body. It exercises various kinds of powers and functions and is the only body that is authorised to make laws for the whole of China. As various kinds of functions have been entrusted to this body, it occupies an enviable position in the constitutional system of the People's Republic of China. But as the Congress is an unwieldy body its present strength being 2700 and it meets quite infrequently, it cannot exercise all these powers in practice.

Q.5. Explain the composition, powers and functions of the Standing Committee of the National People's Congress?

Ans: The National People's Congress meets once in a year and that also for a very short period of time. Therefore, during its long absence, some other body is needed. As in Soviet Russia the Presidium acts and exercises all the powers and functions of the Supreme Soviet of U.S.S.R., when the latter is not in session, the Standing Committee does in the constitutional system of China. The Standing Committee of the National People's Congress exercises almost all the powers of the National People's Congress. Article 57 of the Constitution describes the Standing Committee as "Permanent body."

COMPOSITION

The Standing Committee consists of the Chairman, Vice-Chairman, Secretary-General and some other members. The National People's Congress elects all these members. According to Article 69, the Standing Committee "is responsible to the National People's Congress and reports to it". The National People's Congress may recall the members of the Standing Committee.

TERM OF OFFICE

The Standing Committee is elected for a term of 4 years. But even after the expiry of its term of office, it continues to function till the new Standing Committee is elected by the next National People's Congress. The Chairman and Vice Chairman do not serve for more than two terms.

POWERS AND FUNCTIONS

According to Article 67 the Standing Committee exercises the following powers and functions:

The Committee interprets constitution and statutes. It also enacts and amends the statutes. It supervises the work of the State Council, the Supreme People's Courts, and the Supreme people's Procurator and the Central Military Commission. It also annuls the decisions and orders

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of the State Council, which are in contravention of the constitutional laws or decrees. It has also the power to annul or revise decisions of the Governments of the provinces, autonomous regions and municipalities directly under the central authority.

It decides on the choice of the Ministers. Ministers, Auditor General & secretary General of State Council upon nomination by the Premier and Members of Central Military Commission upon recommendation of its Chairman. It also appoints and removes the Vice-Presidents, Judges and other members of the judicial committee of the Supreme People's Court, the Deputy Chief Procurators, Procurators, and other members of the Procuratoral Committee of the Supreme Procuratorate. It further decides the appointment and recall the ambassadors of China accredited to foreign States. It ratifies and abrogate treaties concluded with foreign States as well as other agreement. It issues the proclamation of state of war, when the congress is not in session, in the event of armed attack on the country or in fulfilment of international treaty obligation concerning, common defence against aggression. It proclaims the enforcement of martial law throughout the country or in certain parts and also decides on general or partial mobilization. It institutes military, diplomatic or other special titles and ranks. It grants special pardons. It institutes State medals and titles of honour and decides on whom to be conferred. Lastly it exercises and performs such other powers and the Congress vests functions as in the Standing Committee.

The National People's Congress performs its functions through various committees, such as, the Bills Committee, the Budget Committee, the Credentials Committee etc. All these committees work under the direction and supervision of the Standing Committee when the Congress is not in session. However, it must be remembered that the powers enumerated above, though quite impressive, are neither complete nor exhaustive. The Constitution authorises the National People's Congress to vest in the Standing Committee any other powers, thus the National People's Congress and not the Constitution is the final determining authority as to what powers shall be enjoyed by the Standing Committee.

CONCLUSION

Like the Presidium of the Supreme Soviet of the U.S.S.R., the Standing Committee occupies the central position in the constitutional structure of China. Constitutionally speaking, it is a committee of the National People's Congress and is responsible to it. But in actual practice, it acts as the legislature of the Chinese Republic. Being a small body and practically dominated by the Communist Party of China it occupies an enviable position in the structure of the Chinese Government.

Q.6 How is the President of the People's Republic of China elected? Also explain his powers and functions.

Ans: The highest executive authority of the Chinese Republic is vested in the President and the State Council. The President is the head of the State and the State Council is, at least in form, like the Parliamentary Executive in other countries.

ELECTION

The National People's Congress elects the President of the People's Republic of China. Mao Zedong first held the high office. Thereafter, the post of Chairman, of the republic has ceased to be of much significance. At present, the Chairman of Military Commission has assumed the real power of the state.

TERM OF OFFICE

The President is elected for a term of four years. According to the Constitution he may be re-elected only once and no more. The maximum tenure that the President can have is thus eight years under normal circumstances.

POWERS AND FUNCTIONS

The President of the People's Republic of China is vested with all the powers of the head of the State. His powers and functions may be given as under—

1. The President, in pursuance of the decision of the National People's Congress or its Standing Committee--
    - (a) promulgates statutes
    - (b) appoints or removes the Premier, Vice Premiers, Ministers, State Councillors Auditor General and Secretary-General of the State Council (i.e., the Council of Ministers).
    - (c) Appoints ambassadors to foreign countries.
    - (d) confers State medals and titles of honour.
    - (e) proclaims Martial law,
    - (f) declares a state of war,
    - (g) orders mobilization.
    - (h) issues order of special pardons
    - (i) receives foreign diplomats. The President of the Republic
2.
    - (a) The President of the Republic represents Republic of China in its relation with foreign states. All correspondence with foreign states is conducted in his name.
    - (b) He appoints or removes ambassadors etc. to foreign states and ratifies treaties concluded with foreign states. But he performs this function in accordance with the decision of the Standing Committee of the National People's Congress.
3. The President is assisted in the discharge of his responsibilities by a Vice-President. He may ask the Vice-President to perform any of his functions.

CONCLUSION

A careful study of the above powers and functions shows that most of his powers are to be exercised by him only in accordance with the decisions of the National People's Congress or its Standing Committee. He is, therefore, only a figurehead. But as long as Mao occupied this exalted office he was both in theory and practices the real ruler of nation, because of his position and prestige in the Communist Party, able to guide and influence the decisions of the bodies concerned. It is, therefore, an office of position and respect in China but much depends upon the person occupying it. Under the constitution of 1982, the President is not the Supreme Commander of armed forces which function under the Central Military commission who's Chairman holds the real power in the country.

Q.7. How is the State Council of the People's Republic of China formed? Give its powers and functions.

Q. Describe the composition, powers and functions of the "Central People's Government' in the People's Republic of China.

Ans: The State Council of the People's Republic of China is similar to the Council of Ministers in other countries like India and particularly the U.S.S.R. It is described by the Constitution as the executive body of highest organ of the state and the highest administrative organ of the State.

COMPOSITION

The State Council, i.e., the Council of Ministers comprises—

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(a) the Premier (Prime Minister),
(b) the Vice-Premiers
(c) the State Councillors in charge of Ministries and Commissions
(d) the Auditor-General and
(e) the Secretary-General.

The National People's Congress upon nomination by President-elects the Premier and other members of the State Council are appointed by the Congress on the advice of the Premier.

The Premier is the head of the State Council and presides over its meetings. The supervision and direction of the working of the State Council is also the task of the Premier. The constitution says that the Ministers and the heads, of the various commissions direct the administration of their respective departments.

POWERS AND FUNCTIONS

According to articles 89, the State Council exercises the following powers and functions—

1. To adopt administrative measures, exact administrative rules, issue decisions and orders and verify their execution, in accordance with the Constitution, laws and decrees.
2. To submit proposals to the National People's Congress or its Standing Committee.
3. To lay down tasks and responsibilities of various Ministries and Commissions.
4. To exercise united leadership over the work of local administrative organs of State throughout the Republic.
5. To alter or annul inappropriate decisions and orders and directives of the Ministries and Commissions.
6. To alter or annul inappropriate decisions and orders issued by local organs of the State administration.
7. To draw up and implement the implementation of the plan for National Economic and social development of the state budget.
8. To direct and administer cultural, educational and public health work.
9. To direct and conclude treaties and agreements with foreign states.
10. To decide on enforcement of martial law
11. To approve geographical division of provinces.
12. To direct and administer the building of Nation defence
13. To examine and decide on the size of administrative organ.
14. To remove administrative personnel according to law.
15. To exercise such other powers and functions as may be vested in the State Council by the National People's Congress or its Standing Committee.

It is claimed that the State Council of the People's Republic of China is akin to a cabinet in a parliamentary system of Government. At the face of it, this claim appears to be justified because there are a number of resemblances. Like other countries, having parliamentary government, the State Council is responsible to the Congress and reports to it or to the Standing Committee when the Congress is not in session. The members of the Congress have the right to ask questions to the State Council or to the Minister or the Commissions of the State Council. Like the Prime Ministers of other countries, the Premier directs the work of the State Council and

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presides over its meetings. The Ministers preside over their respective departments and issue orders and directives in accordance with the laws and decrees and decisions and orders of the State Council relating to their departments. The State Council is the creation of National People's Congress and is responsible to it for all its public acts. The above analysis shows that the powers and functions of the Premier are very much like the powers and functions of the Prime Minister in England or India.

But there is a great difference in theory and practice in China. Outwardly it appears to have all the features of the Cabinet form of Government but in reality it would be a gross mistake to conclude that there is a parliamentary form of Government in China. In practice, there is complete centralization in China and the Communist Party has a tight grip and exercises a strict control on all the Governmental bodies including the State Council. The collective responsibility is also missing. And above all, there is no organised opposition to the State Council in the Congress. The Communist party of China is in complete control of both the Congress and the State Council. From all this, it can, therefore, be safely concluded that in China there is no parliamentary government consistent with the accepted principles of the Parliamentary form of Government.

Q.8. Describe the judicial system of the People's Republic of China with special reference to the Supreme People's Court.

Ans: Section VII of Chapter 3 of the Constitution of the People's Republic of China gives the description of the judicial system of China.

According to article 124 of the Constitution, there are four types of courts in China.

(i) Supreme People's Court.
(ii) Local People's Courts.
(iii) Military Courts
(iv) Special people's Courts.

Law determines the composition and organisation of all these courts.

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SUPREME PEOPLE'S COURT

The Supreme People's Court is the highest judicial organ. It consists of a President, a Vice-President and some other judges. The National People's Congress elects the President of the court for four years. The Congress can also remove him. The Vice-Chairman and the other judges are appointed by the Standing Committee of the National People's Congress and are removable by it. The President is, however, allowed only two consecutive terms and no more.

The Supreme People's Court supervises administration of justice by the local people's courts and the special people's courts. The constitution also provides that Supreme People's Court is responsible to the National People's Congress. In the absence of National People's Congress it is responsible to the Standing Committee of the National People's Congress. Local courts are responsible to the Local Congress, which elected them.

As the organisation of judiciary in China is like a pyramid the Supreme People's Court is at the top and below the Supreme Court are:

(i) Higher People's Courts for the provinces, autonomous regions and municipalities directly under the central government.
(ii) Below the higher people's courts are the people's courts in the counties and in the autonomous Chow.
(iii) Last of all, are the primary people's courts.

The above courts are organised by the Congress of the respective areas. These

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Act provides conditions under which this deprivation can take place.

CRITICAL ESTIMATE

We find that there are five categories of citizens of India. Firstly, there are persons of direct Indian origin permanently domiciled in India. Secondly, there are persons who migrated from Pakistan to India before 19th July, 1948 and their parents being permanent residents of India before partition. Thirdly, there are persons of Indian origin who migrated from Pakistan after 19th July 1948. Fourthly, there are persons who had migrated to Pakistan before or after the partition but were allowed to return to India under permanent permit of settlement. Fifthly, there are persons of Indian origin living abroad and having their names registered with Indian Diplomatic missions abroad. Indian Constitution allows citizenship on the basis of birth, descent and domicile.

The laws of citizenship have been subjected to severe criticism by certain authorities. It is pointed out that citizenship of India is the cheapest in the world. Five-year residence clause will open floodgates for foreign spies, and infiltrators to settle in India.

According to Dr. M.V. Pyle, the most conspicuous feature of the Constitution regarding citizenship is that it establishes single citizenship in India. A citizen of India is entitled to the enjoyment of all the rights guaranteed by the constitution irrespective of his residence in any part of India. But all the same there is one barrier, which hinders the realization of the ideal of single citizenship. This barrier lies in the existence of rules regarding domicile. Every State in India gives preference in services and admission to professional institutions to the people permanently domiciled in the State concerned. This leads to discrimination between one citizen or other. They also encourage provincialism, and regionalism, thus undermining the unity of the nation.

> *"The Indian Federation does not suffer from the fault or weakness of conservatism or legalism."*
>
> **—S.N. Mukherjee**

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7 – FEDERAL ASPECTS OF THE INDIAN CONSTITUTION

The Constitution of India is federal in character yet some commentators that th constitution establishes a federation with a unitary bias point it out. The centre has been give very wide powers. In federal constitutions like those of the U.S.A. and Switzerland, the centre ha lesser powers than those of the units. The framers of the Indian Constitution were, howeve conscious of the fact that while a strict federal structure calls for a weaker centre, the speci circumstances prevalent in this country at the time of the framing of the constitution called for stronger centre. Thus, while in a strictly federal constitution like that of the U.S.A. the residuar powers are vested in the states, in India, like Canada, they are vested in the Centre. Moreover, th past history of India warranted the establishment of a strong centre, since India always fell a easy prey to foreign invaders mainly on account of a weak central authority and division of th country into a number of princely states.

Q.16. How far is the Indian Constitution Federal? Mention specially the points, which giv it a unitary bias.

"Indian Constitution establishes a quasi-federal polity." Discuss.

Ans: India has a vast territory with a great diversity of race, religion and language as depicte in this chapter. Such a big country cannot do without a federal form of government. The frame of the Indian Constitution were convinced of the importance and necessity of a federal polity fo India. The inclusion of the former princely States in the new set-up made it all the mo imperative to frame the Constitution of India on federal lines since the princely States would n have agreed to join the rest of India if it were a unitary State. The common subjection of all t

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parts of India to British Imperialism and the joint struggle of all the people in India against foreign rule were great forces in unifying the diverse elements of the Indian population. All these factors contributed to the ideal of having a federation for India since a federation provides unity at the centre and allows autonomy in local and cultural matters.

The new Constitution, however, does not make India a typical federation like that of the U.S.A. Certain special conditions facing the country at the time of Independence and the desire of the fathers of the Constitution to provide a machinery for the rapid economic development of the country and maintaining national integrity led to the creation of a strong centre. The Constitution makes India or Bharat into a 'Union of States.' Before we proceed with the discussion as to whether India is a typical federation or not, we must understand the various features of a typical federation. Prof. Dicey points out that "a federal state is a political contrivance intended to reconcile national unity and power, with the maintenance of State rights". In the opinion of Dr. Finer, "a federation is that in which part of authority is vested in the local areas and the other part is vested in a central institution deliberately constituted by an association of previously independent local areas." Dr. K.C. Wheare says the "federalism is the method of dividing powers so that the general and regional governments are each, within a sphere coordinate and independent."

A typical federation is supposed to satisfy the following conditions:

(i) Division of powers between the Centre and the States.
(ii) Supremacy of the Constitution.
(iii) Written Constitution.
(iv) Rigid Constitution.
(v) Special Judiciary.
(vi) Dual Polity.

Let us now see how far the Indian Constitution fulfils these tenets of federalism.

(i) Division of Powers: In a typical federation, all the subjects of administration are divided between the federal centre and the federating units. This has been done in the U.S.A., Switzerland, Canada and many other federations of the world. The Constitution of India also declares India to be a Union of States. The Constitution draws up three lists of subjects, viz., the Union List, the State List and the Concurrent List. 97 subjects have been placed in the Union List, 66 in the State List and 47 in the Concurrent List while the residuary powers have been vested in The Central Government. The Centre is competent to administer all the subjects contained in the Union List. The States are authorised to deal with the subjects placed in the State List. The concurrent subjects are under the joint jurisdiction of both the centre and states. This division of powers between the federal centre and the federating units proves the fact that India possesses a federal type of government.

(ii) Supremacy of the Constitution: The Constitution is the supreme law of the land. Both the Union Government and the State Governments derive their authority directly from the Constitution and no authority in India can go against the Constitution. The Judiciary in India has the authority to declare null and void any law or executive order that might go against any provision of the Constitution.

(iii) Written Constitution: The Constitution in a federation is considered to be a sacred agreement on the basis of which the States agree to form a union. It is, therefore, essential that the constitution of a federation must be a written document containing all the provisions governing the relations between the federal centre and the federating states. The Constitution of India satisfies this condition as well since it is a written document duly enacted by the Constituent

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Assembly of India elected by the people.

(iv) Rigidity of the Constitution: Every federation has more or less a rigid constitution. The Constitution of the Indian Republic to some extent satisfies this condition as well. The Constitution provides for a special procedure with regard to its amendment. The Union Parliament cannot amend it in the manner in which ordinary laws can be passed, amended or repealed. Those provisions, which deal with the federal features of the Constitution, can be amended only after ratification by at least half the State legislatures.

(v) Special Judiciary: India possesses a Supreme Court which acts as a guardian and interpreter of the Constitution. The existence of a Supreme Court with special powers is always essential for a federation. The Indian Constitution satisfies this condition too. It gives powers to the judiciary to declare says ultra vires if they are proved to be against any provision of the constitution.

(vi) Dual Polity: The Indian Constitution establishes a dual polity with a double set of governments, i.e., Central government and State governments. The sphere of authority of each part is clearly defined in the Constitution. Thus it satisfies another essential condition of federalism.

The foregoing account of the federal aspect of Indian Constitution proves beyond doubt that India has got a federal form of Government. But the Indian federation is a class, by itself. It has certain special features, which make the centre strong against the federating units. The following facts bring into limelight the pronounced unitary bias of our Constitution:

1. Single Citizenship: In a federation like that of America, each citizen enjoys double citizenship—citizenship of the state wherein one is domiciled and citizenship of the federation as a whole. But the Republican Constitution of India establishes a dual polity with a single citizenship. This means that constitutionally all Indians are labelled as Indians alone, not as Punjabis, Bengalis, Beharis etc. All enjoy equal rights in all the parts of the Indian territory. The idea of single citizenship is clearly a departure from the accepted principles of federalism. The fathers of our Constitution introduced this element in the Constitution in order to ensure the development of a strong feeling of national unity among the diverse elements of Indian population and to minimise the separatist tendencies in the country. The idea of single citizenship is indicative of the unitary character of the Constitution.

2. Excessive authority of the Centre: A weak Central Government is the essence of federalism. But out Constitution has created a very strong Centre. The powers are distributed between the Union and the States in such a way as to make the Centre very powerful. The Union List contains as many as 97 subjects whereas only 66 subjects have been allotted to the States, 47 subjects are placed in the Concurrent List. Although the Concurrent List is a common List and both the Centre and the States are competent to make laws regarding the subjects enunmerated in it, yet the Centre has an upper hand. In case a law is passed both by Parliament and one or more State legislatures regarding a certain concurrent subject, it is the law of the Union Parliament that shall prevail in the event of conflict between the two.

3. Residuary Powers: In a federation like that of the U.S.A. the residuary powers are enjoyed by the states but in the Indian federation; the residuary powers are vested in Parliament. This tends to increase the powers of the centre. In this case, we find that the distribution of powers is similar to that of the Canadian federation where the centre is also very powerful. The Union Government of India, however, has been made even more powerful than the Canadian federation since the Concurrent List in Canada contains only two subjects whereas there, are as many as 47 subjects in the Concurrent List of the Indian Constitution.

4. Emergency power of the Centre: The strength of the Centre can be immense

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increased during the times of war and other national emergencies. Under such contingencies, the President of the Indian Union can assume extraordinary powers, which may amount to suspension of the autonomy of the States. The Union Parliament in such cases is empowered to make laws regarding the subjects enumerated in the State list. The federal structure of the country can thus be changed into unitary one without amending the Constitution during the time of national emergency.

A similar effect will follow if the President is satisfied that the government cannot be carried on in accordance with the provisions of the Constitution in a particular State and declares an emergency. This shows that the Indian, Constitution is at once unitary and federal. It is federal in peacetime and unitary in times of national emergency.

5. Jurisdiction of the Centre over the subjects of the States: Not only does the Union Centre enjoy extraordinary powers during a national emergency but it can also encroach upon the authority of the State during normal times. The Union Parliament can at any time he empowered to pass laws regarding the subjects contained in the State List, if the Rajya Sabha (Upper House of the Union Parliament) declares it to be necessary or expedient in the national interest, by a resolution supported by the majority of not less than two thirds of the members present and voting. Parliament can also pass a law on an item in the State List if such a law is required to honour an international obligation by the Government of India, or if two or more States request Parliament to do so. Thus the Union Centre can encroach upon the autonomy of the units of the Indian Federation at any time.

6. Flexibility of the Constitution: The Indian federal system is not so rigid as is the case with most other federations of the world. The method of amending the Constitution is rather simple. The Union Parliament itself without the approval of the State Legislatures can amend major part of the Constitution. This fact also emphasises the strength of the Centre. The units have no right to initiate amendments to the Constitution.

7. Position of Union Territories: The States enjoy some powers but the Union Territories enjoy no such position. These are merely administrative units directly governed by the Union. This is a clear departure from the established principles of federalism. This fact pointedly indicates the unitary character of the Indian Constitution.

8. Inequality of Representation: In the Swiss and American federations, the upper chamber generally secures an equality of representation to federating units irrespective of their size and population. The lower chamber is supposed to represent the national interest and the upper chamber represents the local interests of the states. In the Indian Union, however, the principle of equality of representation of the units in to upper chamber has not been followed as the states are represented in the Rajya Sabha on the basis of their populations. This fact again proves the inherent unitary nature of Indian Polity.

9. Provisions Regarding the Constitutions of the States: In other federations and particularly in the United States of America and Switzerland, the units have the right to draw up their separate constitutions within the federal framework. But the Indian Constitution like the Canadian Constitution, contains provisions relating not only to the Constitution of the Union but also to the Constitutions of the States. The Constitution of the Union and of the States is a single structure within which the units must work.

10. Redistribution of the Boundaries of the States: The Union Parliament has the power to alter existing boundaries of any State.

Passing a bill to this effect in the Union Parliament on the recommendation of the President can make these changes. The President is, of course, required to ascertain the views of the legislature of the State concerned. The States were reorganised in 1956 and many a time

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thereafter. Parliament may pass such a law in contradiction to the views expressed by the States. In the American and Swiss federations, however, the territorial integrity of the States cannot be violated under any circumstances by the federal government. In these countries, the federating units may be small or big but their names and territorial boundaries cannot be changed.

11. Common All-India Administrative Services: The Constitution provides for common All-India Administrative Services. The Union Government appoints members of these services and they are answerable to The Union Government in the conduct of their service. They are placed in key positions in the State governments. On the other hand in the U.S.A. different States have their own administrative officers appointed by the State Governments themselves. The provision enables the Union Government to exercise control over the administration of States. This practice is a clear departure from the rigid principles of federalism.

12. Institution of Governorship: The head of a State is the Governor who is appointed and dismissed by the President and is responsible to him alone. The President can issue him instructions, which are binding upon him. Thus he acts as the agent of the Union Government in the States. In other federations like that of the U.S.A. and Switzerland, the head of a unit is appointed or elected by the unit itself. This fact also makes it more than clear that the Central Government exercises direct authority over the States.

13. Single Judiciary and Uniform System of Civil and Criminal law: The Constitution provides for a single integrated judicial system for the whole country. The Supreme Court and the High Court are links in the same chain. There is also a single Civil and Criminal Code for the entire country. This fact is clearly indicative of the unitary character of our Constitution since in all the typical federations of the world, like that of the U.S.A. and Switzerland, the State Judiciary is separate and independent of the control of the federal centre.

CONCLUSION

All the factors mentioned above show that the Indian Constitution is federal in form but unitary in spirit. It has made the Union very strong at the expense of the States. Dr. K.P. Mukherjee asserts, "The Union of India does not satisfy any one of the conditions enshrined in the federal principles. On the contrary, our Constitution in its first four chapters makes it amply clear that it is a unitary Constitution and whatever categorisation of the units of the Union and distribution of power between the Centre and States has been done is all for the sake of administrative convenience and these may be withdrawn at any time." The framers of the Constitution justify the creation of a strong Centre on the following grounds:-

JUSTIFICATION FOR CREATING A STRONG CENTRE

(i) India attained independence under curious circumstances. Communal and separatist tendencies were spreading fast. Propaganda initiated by the Muslim League and other communal organisations before Independence had evil repercussions on the political life of the country. These communal and separatist tendencies could be suppressed only by the creation of a strong Central Government.

(ii) The attitude of the rulers of the so-called native States also necessitated the establishment of a strong Central Government capable enough to undo their evil designs. Freedom given to the Princes under the Indian Independence Act, 1947 to accede to either Dominion (India or Pakistan) or declare themselves as independent was clever trick played by the British rulers. Making capital out of the situation, certain rulers of the native States of India had actually declared their independence. It was really a great danger to the territorial integrity of

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India. This danger could only be averted' by the creation of a strong centralised administration in India. In fact, federal sentiments as obtained at the time of the framing of the U.S. Constitution could not be accepted as fundamental in the condition then prevailing in India. Creating a strong centre could only save the territorial integrity of India.

(iii) The framers of the Constitution wanted to profit from the lessons of Indian history. India fell a prey to foreign invaders because of a weak Central Government and bitter rivalries among her ruling princes. A strong Centre alone could possibly save the newly won Independence.

(iv) It was realised that it was absolutely necessary for the reconstruction and development of the country to preserve and mobilise the collective efforts of the people in all parts of the country who got organised in their common fight against the foreign rule.

(v) The old Indian traditions of cultural unity had to be preserved.

(vi) The volcanic state of international life also necessiated the establishment of a strong Central Government.

(vii) The framers of the Constitution were aware of the fact that all those federal Constitutions wherein the federal Centre was deliberately kept weak, are experiencing great difficulties. In the U.S.A. as for example, the authority of the federal government is constantly being increased in view of the enormous increase in the sphere of its activity. The Supreme Court of the U.S.A. in a series of judgements has enhanced the federal authority to an unimaginable extent.

Dr. K.C. Where observes, "The framers of the Constitution merely have done well in not following slavishly any existing federal Constitution? They have chosen rather to make use of such element in federal Constitution as they thought likely to be of value to them". According to Dr. Ambedkar, "the Constitution has not been set in a light mould of federalism. It has been so designed that it should work as a federal system in normal times and as a unitary system in war and other emergencies."

POINTS TO REMEMBER

(i) The Constitution of the Union Republic possesses the following distinctive features of a federation--

1. Like other federations, our Constitution distributes subjects of administration between the Centre and the States.
2. The Constitution is the supreme law of the land giving its authority to both the Central and State Governments.
3. India possesses a written Constitution which is an essential requisite of a federation.
4. Our federation has more or less a rigid Constitution.
5. India possesses a Supreme Court which acts as a guardian and interpreter of the Constitution.

(ii) The following facts prove its Unitary Character—

1. Single citizenship
2. A large amount of authority to the Centre.
3. Residuary powers lie with the Centre which becomes strong.
4. Strength of the Centre increases enormously during National Emergency.

Emergency Powers: The President has wide powers to meet emergencies. The constitution envisages three kinds of emergencies--general emergency, emergency regarding failure of constitutional machinery in a particular State and financial emergency. He has extensive powers with regard to these emergencies.

President and the Council of Ministers: Although the Constitution has armed the President with a wide array of powers, yet he cannot use them effectively. He is only the constitutional head of parliamentary government.

Influence of the President: Absence of effective powers does not mean that he has no influence or prestige. He is the first citizen of India and his office holds great prestige. He has the right to be consulted, to warn and to encourage his Ministers.

Q.24. Critically examine the Emergency Powers of the President. Are those powers consistent with the spirit of Democracy?

Ans: Far more significant and vitally important than the executive and legislative powers of the President are the emergency powers which the Constitution confers on him. By virtue of these powers, the President can change the form and content of the constitution itself. These powers are a unique feature of our Constitution. Similar provisions regarding emergency powers were given only in the Weimer Constitution of Germany, which was responsible for the emergence of dictatorship in Germany.

The Constitution envisages three types of emergency and arms the President with substantial powers to deal with each one of them:

(a) Emergency arising out of war, external aggression or armed rebellion.
(b) Emergency arising out of the failure of the constitutional machinery in a state.
(c) Emergency arising out of the threat to financial stability or credit of India.

It is to be noted that the President himself is the sole judge to determine whether an emergency has arisen or not. The proclamation of emergency can be made even before the actual occurrence of war or external aggression or internal disturbances if the President is satisfied that there is an imminent danger thereof. The President's satisfaction cannot be inquired into or questioned in a court of law.

(a) General Emergency: The proclamation of emergency of this category will have the following consequences:

The Union Parliament will have unrestricted power to make laws regarding the subjects enumerated in the State List. Any law passed by a State Legislature can be declared null and void if the same is inconsistent with laws passed by Parliament.

The Union Executive will issue directions to the State Executive for the conduct of executive business. The Union Executive may appoint officer of its own in the State for any specific purpose.

The President may alter the normal distribution of revenues between the Union and the Sates.

The Fundamental Rights guaranteed in Article 19 of the Constitution will remain suspended during such an emergency, if so ordered by the President.

The President will have the power to suspend the right to move the Supreme Court or High Courts for enforcement of any of the Fundamental Rights given in Article 32.

In short, by declaring emergency, the President can transform the very character of the Constitution. Federal structure of the Government will be changed into a unitary one. Such a power of converting a federation into a unitary government is not possessed by a chief executive head in any other Federal Government.

It may be noted that the President is not absolutely free to act in an arbitrary manner. There is one democratic safeguard. He is subject to the authority of Parliament. Every such proclamation must be laid before Parliament and cannot remain in force for more than 2 months unless approved by Parliament in the meantime. Moreover, it can safely be presumed that the President on the advice of his ministers will wield the executive authority.

Proclamation of National Emergency was made in October 1962 on account of the Chinese Aggression. With this declaration, the people's right to move the Courts in respect of freedoms guaranteed under Article 19 of the Constitution stood suspended. Although the President had the power to curtail the autonomy of States to any extent, yet it was not done, on account of the fact that the same party had its government at the Centre as also in the States. The emergency was lifted in January 1968. The national emergency was declared for the second time on 3rd December, 1971 on account of the treacherous attack by Pakistan on our air bases in the western and eastern sectors.

Prime Minister Indira Gandhi declared the national emergency arising out of internal disturbances on 26th June 1975. She felt that some political parties with fascist leanings had joined hands with frustrated politicians to destroy the country's self-confidence and to challenge the very basis of democratic functioning. They forced and compelled the M.L.A's of Gujarat State to tender their resignations. They wanted to repeat the same technique in Bihar and other States. Together, they launched a violent agitation to paralyse the country's economic life and to divert the nation's attention from its social and economic tasks. They wanted to create anarchy and chaos in order to over-throw a popularly elected government in the country. It was the sole purpose of keeping these undemocratic and anti social forces in check that the national emergency in its full-fledged form had to be declared.

(b) Failure of constitutional machinery in the States: The condition of Emergency can also arise in case the constitutional machinery in a State of the Indian Union fails to function. The President, if satisfied on the recommendation of the Governor of a State or otherwise, can declare emergency and suspend the Constitution in that State. The proclamation of an emergency arising out of the breakdown of the Constitution shall be laid before the two Houses of Parliament within a period of two months. If Parliament (both the Houses) approve, of it, the emergency shall continue to operate in that part of the country for a period of six months. If the situation continues to be abnormal, the period of emergency can be further extended to six months after the approval of both the Houses of Parliament. It can continue to remain effective in this manner for the maximum period of 3 years. It must be remembered that limitation of six monthly approval with 3 years as the maximum period is applicable only to aforesaid emergency and not to other two types of emergency.

The proclamation of emergency under this condition shall have the following consequences.

1. The President assumes to himself all executive authority vested by the Constitution in the Governor. The Governor concerned may, however be directed to act as an agent of the President.
2. The President may empower Parliament to exercise all the powers of the Legislature.
3. The President will have the authority to withdraw money from the Consolidated Fund of the State pending the sanction of Parliament if it is not in session.
4. The President cannot however, assume to himself or transfer to someone else the powers of the State High Court.

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EMERGENCY PROVISIONS IN OPERATION

Since the inauguration of the Constitution in January 1950, there have been many occasions when emergency was declared in various States of Indian Union on account of failure of constitutional machinery. Punjab was the first State where emergency was declared in 1950 when Dr. Gopi Chand-Bhargava lost the support of the majority in the State Legislature. The second occasion arose when non-Congress ministry led by Gian Singh Rarewala lost the support of the majority in Pepsu Legislature. The President had to declare emergency in 1952. The President appointed a senior I.C.S. officer to act as an advisor to the Rajpramukh. The third occasion arose in Andhra in 1954 when Prakasham was dismissed. The fourth occassion arose when emergency was declared in Travancore Cochin (now a part of Kerala State). The fifth occasion arose in 1958 when emergency was declared in Kerala when the Communist Party had a workable majority. This was done in response to popular pressure mounted by the opposition parties. The sixth occasion arose in 1961 when emergency was declared in Orissa. The seventh occasion arose in 1964 regarding Kerala State. In Kerala, emergency was declared thrice after 1959. A similar emergency was declared in Punjab in 1966. In 1967 emergency was declared in Rajasthan. Breakdown of constitutional machinery was declared in Haryana in November 1967. It was declared in West Bengal in March 1970. In 1973, it was declared in Orissa, U.P., Andhra and Bihar States. In fact, there is no State in which this emergency has not been declared.

(c) Financial Emergency: A Proclamation of Emergency may also be made if the President is satisfied that a situation has arisen whereby the financial stability or credit of India or a part thereof is threatened. The terms and conditions of the Proclamation of financial emergency are the same as of the national emergency. The consequences are, however, different. They are given as under:

1. The salaries and privileges of all public officials including the Judges of the Supreme Court and the High Courts and members of the Public Service Commission can be reduced.
2. All money bills passed by the State Legislatures will be reserved for the consideration of the President.
3. Normal distribution of revenues between the Centre and the States may be altered.
4. The President may take all necessary action for restoration of financial stability.

CRITICISM

(a) The provision regarding emergency powers of the President are regarded as incompatible with the spirit of democracy and federalism. The powers are like a loaded gun which may be used at any time to destroy democratic federalism. The Weimer Constitution of Germany granted similar powers to the President of the German Reich and it was by the use of these powers that Hitler was enabled to destroy the liberty of the German people and establish his dictatorship.

(b) The powers of suspending fundamental rights is perhaps the most undemocratic feature of these powers. To make matters worse, the President can suspend the right to move the courts for the enforcement of the fundamental rights. When a debate over these provisions was going on in the, Constituent Assembly Shri H. V. Kamth protested: "This is a day of shame and sorrow. May God help the Indian people."

It may, however, be noted that the British Parliament and the American Congress can also suspend the writ of 'Habeas Corpus'. But in India, the President or rather the Union

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Executive, can suspend these rights at any time. A redeeming feature of the whole thing lies in the fact that the President is required to lay before Parliament his orders regarding the suspension of the right to move the courts for enforcement of the fundamental rights. Moreover, one single individual cannot be expected to take such drastic measures all by himself. In proclaiming emergencies, like all other actions, the President is expected to act on the advice tendered by Cabinet.

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(c) The provision regarding the suspension of the Constitution in a State by the President is also no less objectionable. The autonomy of a State can be encroached upon at any time. The President is not required to wait for the report of the Governor regarding the failure of constitutional machinery in a State. He takes action on his own initiative. Further, Article 365 lays down that the Constitution in a State may be suspended if a State executive fails to comply with any directions given by the Union Executive. This type of emergency has been declared several times regarding one State or the other.

The President's powers in this connection are undoubtedly drastic. This reminded one of the powers of the Governor-General under the Act of 1935. But the essential spirit of the Constitution enjoins the adoption of the British Parliamentary conventions, which reduce the President to the status of mere constitutional figurehead and only a symbol of national unity. He is expected to act on the advice of his Ministers who are responsible to the Lok Sabha.

The justification of these emergency provisions lies in the past history of India. Whenever there was a weak Centre, it led to ruin and disaster. After independence, the country was facing separatist tendencies. The fissiparous forces were strong. The problem before the fathers of the Constitution was not only to give a democratic Constitution but also provide safeguards against anti-national and anti-democratic forces. These emergency powers of the President were expected to be used sparingly only in case of real emergencies.

There is however, a danger against misuse of these powers by the party in power for its party ends. This can be avoided only if the public opinion and democratic forces are very strong in the country. In fact, no democracy can work successfully unless the people are alert and vigilant against non-democratic and anti-democratic forces. Thus a heavy responsibility lies on the people to safeguard their interest and democracy in the country. The emergency powers always hang like the sword of Damocles on the shoulders of erring States. They also ensure continued government there. Dr. Amal Ray remarks "an overall estimate of the proclamation of emergency declared by the President in respect of different States at various occasions shows that the Centre never tried to retain power longer than what was necessary to normalise the State administration." Some critics, however, point out that the breakdown of constitutional machinery in a number of States was declared in order to curb opposition and support the installation of Congress Ministers. They cite the example of Kerala and Rajasthan. in support of their contention. In these States emergency provisions of the Constitution were invoked to push the interest of the ruling party at the Centre.

POINTS TO REMEMBER

The President of Indian Republic has been armed with extensive powers during emergency. By the use of these powers, he can transform the entire governmental structure of the State. The constitution envisages three different emergencies, viz., an emergency arising out of external aggression and armed rebellion, an emergency arising out of the failure of constitutional machinery in the States and an emergency arising out of financial breakdown. In the event of the first emergency, the federal structure of the country is converted into unitary one. In case of second emergency, the State Government comes under the direct control of the Union

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Government. In case of financial emergency, the President may take necessary steps to restore the financial stability of the country. The emergency provisions of the Constitution are subjected to scathing criticism. These powers are like a loaded gun which may be used at any time to destroy democratic federalism. The power regarding the suspension of fundamental rights is, perhaps the most undemocratic feature. Suspension of internal autonomy of States is another objection. The redeeming feature of the whole thing is that the President cannot act independently of the Parliament and the Cabinet. It will be only in grave situations that these powers can be used. Moreover, a strong Central Government is the lesson of Indian history, which cannot be easily ignored.

Q. 25. Compare and contrast the powers and functions of the Indian President and the Governor General of India under the Government of India Act 1925.

Ans: Very often it is pointed out that the President has almost all the powers which were given to the Governor-General by the Government of India Act, 1935. Though at first sight, this comparison might seem to be correct, it is not so in actual practice. The Governor-General was intended to be a despot by the Act of 1935, so that he could act as a watchdog of the British Imperial interests, both during peace and war. He was, therefore given very wide powers in the executive, a legislative and financial sphere. In the executive sphere, there were three reserved subjects over which he had the sole authority and was allowed to act in his own direction. These were defence, external affairs and ecclesiastical affairs. In the administration of these subjects, he was not supposed to consult the Council of Ministers. Even in other matters he was not supposed to act on the advice tendered by the Ministers if that tended to affect the interests of the British Empire in India. The Governor General had special instructions to exercise his personal judgement in matters relating to maintenance of law and order and financial matters too. The Ministers were supposed to be mere henchmen of the Governor-General. Although, the Ministry was to be responsible to both the chambers of the Federal Legislature, yet the Instrument of Instructions required the representation of the princely and other interests in the Council of Ministers.

The Constitution does not arm the President with all these sweeping powers. He has no reserved subjects. On all matters he is supposed to act on the advice of the Cabinet. The entire executive sphere has been placed under the jurisdiction of the Cabinet. The President has neither 'discretionary powers' nor can he use his individual judgement, which the Governor-General was empowered to use. The Indian President has been made a constitutional head of the State and real powers are vested in the Cabinet, which is responsible to the Lok Sabha.

Though the latest amendment of the Constitution makes it obligatory on him to accept the advice of the Ministers yet he is to follow the conventions of the British parliamentary system. The Council of Ministers is constitutionally responsible to the Lok Sabha. The President has no free hand in the election of Ministers, who are to be selected only on the advice of the Prime Minister who is to be the leader of the majority party in the Lower House of Parliament. Whereas the Governor-General was only responsible to the British Government for his actions, the Indian President can be impeached by Parliament for any violation of the spirit of the Constitution.

In the legislative sphere, the Governor-General could veto the bills passed by the Federal Legislature. The President possesses only suspensory veto. It can be over-ridden by Parliament, if it re-passes the bill in the same form within 6 months. In the matter of issuing ordinances during the absence of the legislature, the powers of the Governor-General were almost the same as those of the President. But in addition, there were certain subjects for which the Governor-General could issue ordinances at any time, and they were valid for 6 months, subject to renewal for further periods of 6 months. For these ordinances, the Governor-General was required to obtain the approval of the Secretary of State for India and the British Parliament, and not of the federal Legislature. The President of India, however, cannot issue any such ordinances.

The residuary powers which are now exercised by Parliament, were given to the Governor-General under the Act of 1935, to be exercised in his discretion. The Federal Legislature was also greatly handicapped. It had very limited control over the Federal finances.

There were certain items of the budget over which it could not vote. The Governor-General could certify a demand rejected by the legislature. The Indian Constitution does not give any such power to the President. It only says that all bills must receive the President's assent before becoming Acts. The President is normally expected to give his assent. With respect to financial legislation, the President cannot withhold his assent. Thus the Governor-General was given very wide powers under the Act of 1935, which are not stipulated under the Indian Constitution for the President. The President is supposed to act merely as a constitutional head like the King of England. Though the British Government also held out assurance that the Governor-General would not interfere in the day-to-day administration. Yet it could not be tested as the Act was never enforced so far as the provisions regarding the federal Government were concerned.

POINTS TO REMEMBER

Sometimes, it is pointed out by critics that the President of India is no less autocrat than the Governor-General of India under the Act of 1935. But it is a false assertion. The Governor-General under the Act of 1935 was indeed a jealous guardian of British Imperial interests in India. He had vast over-riding power in the executive, legislative and financial spheres. He was the supreme lawmaker because he could veto all Bills passed by the Federal Legislature. On the positive side, he could issue ordinances. He had control over the major part of the budget. He could act in his own discretion and individual judgement and could ignore the advice of his Ministers. The President of India like the King or Queen of England is only a constitutional head of Parliamentary Government.

Q.26. Compare and contrast the powers of Indian President thereof the American President.

Ans: It has been usual to regard the American President as wielding the largest amount of authority ever wielded by any one in a democracy. But a perusal of the powers conferred upon the Indian President by the Constitution show that the Indian President has, at least on paper, far more formidable powers. Leaving aside his vast executive, legislative, judicial and financial powers, his emergency powers are unprecedented. By an exercise of these powers, he becomes a controller of the whole constitutional machinery both at the Centre and the State and the country can be transformed into a unitary State. The superiority of the Indian President over the American President is seen in the following facts:

1. The American President presides over a weak Centre while the Indian President does so over a strong one. In the American constitutional system, the States occupy a place of vantage and the Centre occupies a position of inferiority. In the case of India, on the other hand, the Centre has been made far stronger. Particularly the emergency powers given to the Indian President to suspend the autonomy of the States in times of a national crisis are such as are not enjoyed by the American President. The Indian President can suspend the Constitution in a State and declare constitutional emergency either on the recommendation of the Governor or independently. He may assume the control of the administration of the State affected and dissolve the State Legislature and dismiss the State Council of Ministers. In financial emergencies, the Indian President has the power of

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reducing the salaries and allowances of all Government officials, whether of the States or of the Union, including the salaries and allowances of the judges of the Supreme Court and the High Courts. Only the Indian President possesses such a control over the judiciary.

2. Apart from the emergency powers, the President of India has been given a formidable list of other executive, financial and legislative powers. He is also the supreme commander of the armed forces of India and can take an action in case of an imminent or actual aggression against India on the advice of the Cabinet, in anticipation of its subsequent approval by Parliament. He can suspend the Constitution in a State in case of failure of the constitutional machinery in that State and assume the administration himself. He can also declare a financial emergency. The American President has no such power.

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But this is only one side of the picture. In reality the Indian President occupies a position of far lesser strength than the one occupied by the American President. In the first place, the Indian President is guided by the advice of his Ministers who are responsible to and controlled by the Parliament in a way in which the American President is not. Thus whereas in India, there is the parliamentary system of government in the U.S.A. there is Presidential system of Government. As such the American President is free from the control of the legislature. Secondly, the Indian President is more or less a choice of Parliament whereas an electoral college specially elected for the purpose elects the American President. An electoral college composed of the elected Members of both Houses of Parliament and the Legislative Assemblies of the States chooses the Indian President. Either House of Parliament can impeach the Indian President whereas in America it is the Upper House, the Senate, which has the sole power of impeachment. In India, on the other hand, either House of Parliament will have such power provided the other House prefers the charges.

In the third place, the Indian President has lesser veto power than that held by the American President. The American President possesses double veto power. He can veto a Bill passed by the Congress unless the two third majorities of both the Houses once again pass it. Then he has his power of pocket veto, according to which a Bill, which is lying with him for signatures, dies an automatic death if the session of Congress comes to an end within ten days during which he is required to return the Bill. On the other hand, the Indian President has no such power regarding the exercise of 'pocket veto' and his veto can be over-ridden by a simple majority in Parliament. The Indian President can only exercise his veto regarding certain types of Bill passed by the State Legislatures. His veto is absolute in this respect. The American President has no such powers at all. The Indian President can dissolve Parliament, while the American President can never dissolve the Congress before the expiry of its normal term. In the fourth place, the President of America is both head of the state and the Government. The Indian President on the other hand is head of the State but not of the Government.

However, it is the parliamentary system of Government in India that is the real check on the power of the Indian President. The President is provided with a Council of Ministers, which is required to aid and advise him in the discharge of his duties. Of course, the Constitution demands of him to follow the advice tendered by the Council. In America, the Cabinet Members are mere servants of the President. They are not responsible to the Congress, nor have they any power to speak on the floor of the House. They are appointed by the President and are liable to be dismissed by him. They have no such status as the Cabinet Ministers in India have.

As Laski rightly says, "The President (American) in a word symbolises the whole nation in a way that admits of no competitor while he is in office. The voice of a Cabinet officer is, at

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best a whisper, which may or may not be heard". In other words, it is the American President who determines the policy of the Government independently. The Cabinet Ministers are merely his assistants. In India, however, the Cabinet occupies a position very much similar to that occupied by the British Cabinet. It is the Cabinet, which is responsible to the people through its responsibility to the Lower House. The President will not normally dare to disregard such an advice as is given to him by the Cabinet since it is the latter which is in control of the majority in the Lower House. It is this fact which greatly limits the powers of the President in actual practice. The fact is that whereas the American President is a real executive head, the Indian President is expected to be a constitutional head.

As is evident from the above, there is a great difference between theory and practice regarding the powers and position of the Indian President. In theory, the powers enumerated in the Constitution belong to the President but in reality they belong to him only in a formal sense. In practice, these powers are expected to be exercised by the Cabinet which is the real executive of the Union, a responsible body answerable for its policies and actions to Parliament. Though the executive authority of the Union is exercised in the name of the President yet it is actually exercised by the Ministers. It is the Ministers who take all the decisions although these decisions are executed in the President's name. However, in times of the constitutional crises, these powers may turn out to be very real as happened in case of Weimer German Republic after 1928. The President established Fascism in that State by exercise of emergency powers, similar to those of the Indian President. Our President, of course, cannot assume such dictatorial powers since he is under an effective control of both Parliament and the Cabinet.

POINTS TO REMEMBER

Theoretically, the Indian President enjoys more powers than the American President. The Indian President is the head of a very strong Central Government, whereas the American President is the head of a very weak Federal Government. Secondly, the Indian President enjoys certain emergency powers, which do not fall within the sphere of authority of the American President. But this difference is only to be found in theory. In practice, the Indian President fades into insignificance before the American President. The difference is mainly caused by the system of government which prevails in the two countries. The Indian President is the head of a Parliamentary government and is, therefore, required to be a figurehead like his prototype, the British King or Queen. The American President is the head of a Presidential government and is not, therefore, supposed to surrender his powers to his ministers.

Q. 27. Describe the Method of Election, qualifications, and term of office and functions of Vice-President of the Indian Republic.

Ans: The Constitution of India provides for the office of a Vice-President.

ELECTION

Both the Houses of Parliament elect the Vice-President indirectly by secret ballot in accordance with the system of proportional representation by means of single transferable vote. The fifth Vice-President B.D. Jatti was elected to the august office on August 27, 1974. He polled 78.3% of valid votes defeating N.E. Horo sponsored by several opposition parties.

Mr. Mohammad Hidayatullah, formed Chief Justice of the Supreme Court, was elected unopposed as the Sixth Vice-President of India on August 7, 1979. He was sworn in on August 31, 1979 when the term of Mr. B.D. Jatti expired. The Seventh Vice-President was Shree R Venkataraman. He was succeeding by Dr. Shankar Dayal Sharma when the former became President of India in 1987.

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EMOLUMENTS

The Constitution does not fix any emoluments for the Vice-President of India in his official capacity as such. He draws his salary as the Chairman of Rajya Sabha. He gets the emoluments equivalent to that of the President in the event of his being an Acting President.

QUALIFICATIONS

(i) He must be an Indian citizen and qualified for election as a member of the Rajya Sabha.

(ii) He should have completed 35 years of age.

(iii) He should not be a member of either House of Parliament or of any State Legislature. If such a member is elected Vice-President, he shall resign his membership.

(iv) He should not hold an office of profit under the Government. However, an exception to this is made in the case of President, Vice-President, Governor and Ministers.

TERM OF OFFICE

The term of his office is 5 years. During this period, a Vice President may resign voluntarily or he may be removed from office by a resolution passed by an absolute majority of the Rajya Sabha and agreed to by the simple majority of the Lok Sabha. But no resolution will be moved for this purpose without a notice of 14 days. It is to be noted that no procedure for impeachment is necessary for the removal of the Vice-President. The election of the Vice-President must be held as soon as possible after the vacancy has arisen. He shall hold office for the full term of 5 years. The Supreme Court shall decide all disputes regarding the election of the Vice-President.

HIS FUNCTIONS

The Vice-President performs the following functions:

1. The Vice-President is the ex-officio chairman of the Rajya Sabha, like the Vice-President of the U.S.A. who is also the ex-officio chairman of the Senate. In case, the Vice-President acts as President of India and discharges the functions of the Presidency, he shall not preside over the sessions of the Rajya Sabha.

2. The Vice-President officiates as President in case of death, resignation or removal of the latter till the new President is elected. The period can be extended for a maximum period of six months. The Vice-President thus unlike the Vice-President of U.S.A. does not succeed as the President for the rest of the latter's term.

It may be noted that after the death of the President Dr. Zakir Hussain, Shri V.V. Giri who was then Vice-President succeeded to the Presidency and continued to work as Acting President till he was formally elected as President of India.

3. When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions. During such periods, he shall be entitled to all the powers and immunities of the President. He shall be entitled to such emoluments, allowances and privileges as may be fixed by Parliament by law.

4. Like the Vice-President of U.S.A. the Vice-President of India may pay official visits on behalf of the Government of India to foreign States.

5. The Vice-President is the ex-officio Chancellor of the University of Delhi.

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POINTS TO REMEMBER

1. His election: both the Houses of the Union Parliament elect The Vice-President by secret ballot.
2. His qualifications:
   - (a) He must be an Indian citizen and qualified for election as a member of the Rajya Sabha.
   - (b) He must not be less than 35 years of age.
   - (c) He should not be a member of either House of Parliament or of any State Legislature.
   - (d) He should not hold any office of profit.
3. His term of office: His term of office is 5 years.
4. (a) His Functions: He is the ex-officio chairman of the Raiya Sabha.
   - (b) He officiates as the President when the latter is ill or absent from the country or resigns or dies

Q. 28. Describe the procedure for the formation of the Council of Ministers with special emphasis on the relations between the President and the Council of Ministers. Discuss the Functions of the Council of Ministers.

Ans: The Constitution provides that, "there shall be Council of Ministers to aid and advise the President in the exercise of his functions." The President appoints the Prime Minister and the latter on the advice of the former appoints other Ministers. They hold office during the pleasure of the President. Article 53 of the Constitution also prescribes that the executive power of the Union vested in the President is to be exercised by him either directly or through officers subordinate to him. Thus the Ministers cannot take any executive action in their own name. The President himself makes rules for the organisation of the departments and conduct of the Government. Moreover, the Constitution now makes it binding upon the President to act according to the advice of his Ministers. The Parliamentary system presupposes gap between theory and practice. In theory all the powers belong to the head of the State but in practice, they belong to the Ministers who are responsible to Parliament. In actual practice, therefore, his position is quite otherwise. The Constitution lays down that the Council of Ministers shall have collective responsibility towards the Lok Sabha. In other words, the Constitution provides for a Parliamentary type of government. The form of government cannot work successfully unless the legal executive head surrenders his powers to the responsible cabinet. A constitutional deadlock will occur if the legal executive head wants to enjoy real and effective powers. Since, then, it was not obligatory on the President to accept the advice of the ministers, Dr. Rajendra Prasad the then Chairman of Constituent Assembly remarked in the Constituent Assembly, "Although there is no provision in the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that the conventions, under which in England the King always acts on the advice of his Ministers, would be established in this country also and the President would become a Constitutional President in all matters."

Dr. Rajendra Prasad as first President of Indian Republic, proved the truth of his words quoted above. He established healthy parliamentary conventions by following the advice tendered by the Ministers. It can now be safely hoped that true Parliamentary relations between the chief executive head and the Ministers have come to stay.

Formation of Ministry in Practice

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CONSTITUTIONAL AND POLITICAL HISTORY OF PAKISTAN

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The Constitution of 1956

After nine years of effort, Pakistan succeeded in framing a Constitution which became effective on 23 March 1956, proclaiming Pakistan as an Islamic Republic. In its general aspect, the 1956 Constitution was based on the pattern of the Government of India Act, 1935.

The 1956 Constitution was lengthy and detailed. It contained 234 Articles, divided into 13 parts and 6 schedules. On examination, we find several explanations for its length as stated below:

i. The Islamic character of the Consititution sought to base the Constitution on Islamic principles and provisions which occupied some length;

ii. It was a federal Constitution which is usually more complex, prescribing not only for the federation but also for the units;

iii. The relations between the federation and the provinces were complicated, necessitating considerable length;

iv. Special provisions had to be made for tribal areas and special areas;

v. Some matters which could have been dealt with by ordinary legislation, such as judicial organization, were included in the Constitution; the organization of the Federal Court and the judiciary of the provinces occupied as many as thirty-one Articles;

vi. There were other matters which the Constituent Assembly thought fit to include in the Constitution, relating to the public services, the languages of the federation, and the election commission, and others;

vii. It was found necessary to include emergency provisions covering Part IX of the Constitution; and

viii. Lastly, it was thought fit to include not only a lengthy Bill of Rights but also directive principles of state policy.

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Part I of the 1956 Constitution dealt with the Republic and its territories; Part II with Fundamental Rights; Part III with directive principles of state policy; Part IV with the federation; Part V with the provinces; Part VI with the relations between the federation and the provinces; Part VII with property, contracts, and suits; Part VIII with elections; Part IX with judiciary; and Part X with the services of Pakistan; Part XI dealt with emergency provisions; Part XII with general provisions; and Part XIII with temporary and transitional provisions. Of the six schedules, the first dealt with the election of the President; the second with oaths and affirmations; the third with powers of the Supreme Court and the remuneration of judges; the fourth with the remuneration and privileges of the President, the Speaker, the Deputy Speaker of the National Assembly and provincial assemblies, the members of the National Assembly and provincial assemblies, as well as the provincial governors; the fifth with the lists of subjects for which either the federation or the provinces, or both concurrently, would be competent to legislate; and the sixth with the election of the first President of the Republic.

Fundamental Rights

There was no Bill of Rights under the interim Constitution. The British constitutional experts who drafted the Government of India Act, 1935 were against the incorporation of such a Bill in the Act, but after independence, the preponderance of views in Pakistan as in other new democracies was in favour of a Bill of Rights being incorporated into the Constitution. Experience under the rule of law during British rule was not always happy because the British practice in their colonies differed from that in the United Kingdom. During the movement for freedom, the idea of a Bill of Rights, as incorporated in the Constitution of the United States of America and in many other modern constitutions, appealed very much to nationalist leaders. It was, therefore, natural

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that the nature and content of fundamental rights should have engaged the attention of the framers of the Pakistan Constitution from the very beginning of their assignment in 1947. A committee on the fundamental rights of the citizens and on matters relating to minorities was set up at the inaugural session of the first Constituent Assembly in August 1947. In fact, there were weighty arguments in favour of fundamental rights being defined and inserted in the proposed Constitution. In a country such as Pakistan where the English tradition of democratic practices was lacking and where public opinion was not yet articulate or powerful, the need for such a declaration was imperative. Further, since Pakistan had religious minorities, it was necessary to define and protect the rights of individuals, irrespective of caste, creed, or religion. The interim report of the Committee of Fundamental Rights was accepted in 1950 long before the adoption of any other laws of the Constitution. The single idea, in the interim report on Fundamental Rights, was to quote the words of Liaquat 'to respect the dignity of man'. The Fundamental Rights, as adopted by the first Constituent Assembly, included familiar liberties such as equality of status, of opportunity and before law; social, economic, and political justice; and freedom of thought, expression, belief, faith, worship, and association. Fundamental Rights were guaranteed to Muslim as well as to non-Muslim citizens, without any discrimination or distinction. No concept of 'second class citizens' could be found in the list of these rights which were to be enforced by the law courts.[1]

The second Constituent Assembly retained all these rights, liberties, and liberal principles and ideals behind them, but with improvement in the content of some. The 1956 Constitution laid great emphasis on fundamental rights by asserting that if any existing law or custom or usage having the force of law on Constitution day was inconsistent with any provision of fundamental rights, it would be void to the extent of such inconsistency and similarly no authority in Pakistan whether the federal government, the National Assembly, a provisional government or egislature, or any local authority, was competent to nake any law, regulation, or any order which might e repugnant to any of the provisions of the undamental rights and if any such law, regulation or order was made, it would to the extent of repugnancy be void.[2] Thus the democratic concept of limited government, that is, a government that rules by law is itself ruled by law, was established. The judiciary was given the power to enforce fundamental rights and the courts were to decide if a law was repugnant to any provisions of fundamental rights.

Familiar democratic rights and freedom such as freedom of speech and expression, of assembly and association, of movement and profession, were all provided for in the Constitution, with the usual qualifications. With regard to civil rights, familiar rights such as the right to life, liberty, and property were granted, again with the usual qualification and safeguards. Most of the constitutions which guaranteed such liberties have found it necessary to make qualifications regarding the exercise of such rights. An important provision from the standpoint of civil liberty was provided which laid down that a person arrested should not be detained in custody without being informed, 'as soon as may be' of the grounds for such arrest, and such person should not be denied the right of legal consultation and defence. Further, a person arrested or detained in custody was given the right to be produced before the nearest magistrate within a period of twenty-four hours and no further detention was allowed, except on the order of the magistrate.[3]

Such safeguards were, however, not applicable to an enemy alien, or anyone arrested or detained under a law providing for preventive detention. When the Constitution was in the process of being made, Security Acts regarding preventive detention were targets of severe criticism and attack from the opposition parties and also outside the legislature. The United Front in East Pakistan pledged itself to repeal any Security Act that may be in existence. The majority of the framers of the Constitution, including the members of the United Front felt that some safeguards against subversive, anti-state, and anti-social actions should be retained in the Constitution. They took sufficient steps to lessen the risk of such provisions being misused by limiting the powers of preventive detention to not more than three months, unless an advisory board appointed by the Chief Justice of Pakistan in the case of persons detained under a central Act and by the Chief Justice of the province in the case of people detained under a

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provincial Act, could certify that there was sufficient cause for such detention. The provision for review by a judicial body was undoubtedly an improvement which would act as a healthy check against abuses.[4]

During an emergency the President could, by an order, suspend the enforcement of fundamental rights guaranteed to the citizens under the Constitution. It is the right to move any court for the enforcement of the fundamental rights that could be suspended. Such an order was required 'as soon as may be' to be laid before the National Assembly.[5]

The principal fundamental rights guaranteed by the 1956 Constitution are briefly described below:

1. All citizens were equal before the law and entitled to equal protection of the law.[6]
2. No person could be deprived of life or liberty, save in accordance with the law.[7]
3. No person could be punished for an act which was not punishable when committed.[8]
4. The right to apply for a writ of habeas corpus could not be suspended, except in the case of an external or internal threat to the security of the state or other grave emergency.[9]
5. There should be no discrimination on grounds of religion, race, caste, sex, or place of birth with regard to access to places of public entertainment, recreation, welfare, or utility.[10]
6. All forms of slavery, servitude, forced labour, torture, or cruel or inhuman treatment or punishment were declared illegal.[11]
7. All duly qualified citizens were made eligible for appointment to the service of the state, irrespective of religion, race, caste, sex, descent or place of birth, provided that it should not be unlawful for the state to reserve posts in favour of any minority or backward section.[12]
8. No person could be deprived of his property without adequate compensation.[13]
9. All citizens were guaranteed (a) freedom of speech, expression, association, occupation, acquisition and disposal of property, and peaceful assembly; (b) the right to move freely throughout Pakistan and to reside in any part of the country.[14]
10. Freedom of conscience and the right to profess, practise, and propagate any religion, subject to public order and morality, were guaranteed.[15]
11. No one attending any educational institution could be required to receive religious instruction or to attend religious worship other than that of his own community or denomination. No religious community could be prevented from providing religious instruction to pupils of that community in any educational institution which it maintained. No one could be compelled to pay any special taxes the proceeds of which were specifically appropriated for the propagation or maintenance of any religion other than his own.[16]
12. The notion of untouchability being inconsistent with human dignity, its practice was declared unlawful.[17]

These 'fundamental rights' contained a clear statement regarding the rights of individuals (whether *qua* individuals or members of a wider group like a community or a religious denomination), and these rights were fundamental not only in the sense that they had been mentioned in and guaranteed by the Constitution but were such as neither the legislature nor the executive could in any manner curtail or diminish. These rights limited legislative and executive powers and would be a clog on the 'temporary' will of the 'simple' majority in the legislature. They embodied a permanent and paramount law which could not be disturbed by the will of the legislature or of the executive. These fundamental rights would operate like a double-edged sword. They not only destroyed those portions of existing laws which were in conflict with these rights but also operated to render void any state action (whether in the legislative or executive field) which, after the coming into force of the Constitution, had the effect of taking away or abridging any of the fundamental rights.[18]

Directive Principles of State Policy

The Basic Principles Committee had recommended the inclusion of Directive Principles of State Policy. The following were included in the 1956 Constitution:

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1. Steps should be taken to enable Muslims to order their lives in accordance with the Quran and the *sunnah*, *inter alia*, the compulsory teaching of the Quran, namely the prohibition of drinking, gambling, and prostitution, and the proper organization of mosques.[19]
2. The provision of food, clothing, housing, education, and medical relief should be made for citizens incapable of earning their livelihood owing to unemployment, sickness, or similar reasons.[20]
3. The improvement of living standards, the prevention of the concentration of wealth and means of production in the hands of a few, and the prevention of the exploitation of the workers and peasants.[21]
4. Abolition of illiteracy as rapidly as possible.[22]
5. Training and education for the population of different areas to enable them to participate fully in all forms of national activity and service.[23]
6. Discouragement of parochial, tribal, and racial feelings among Muslims.[24]
7. Strengthening of the bonds of unity between Muslim countries.[25]
8. Promotion of peace and goodwill among the peoples of the world.[26]
9. Separation of the judiciary from the executive, as soon as practicable.[27]
10. Protection of all legitimate rights and interests of non-Muslim communities.[28]
11. Protection of children, young people, and women against exploitation and employment in unsuitable occupations.[29]
12. To achieve parity in the representation of East Pakistan and West Pakistan in all spheres of federal administration.[30]
13. To eliminate *riba* as early as possible.[31]

The state was to be guided by these Directive Principles of State Policy in the formulation of its policies, but they were not enforceable in any court of law.[32] The provisions of the Constitution containing such principles constitute the manifesto of the policies and programmes of the state as they were to be administered and as they were visualized by the founding fathers and were required to be kept in view by subsequent generations so as to secure a continuity in the maintenance of a homogeneous and consistent policy in the matter of handling the affairs of the state.[33]

Parliamentary Form of Government

The first Constituent Assembly decided in favour of the parliamentary form of government, both at the centre and in the provinces. There were some who believed that parliamentary democracy was not suited to Pakistan. Their argument was that in the absence of two strong, stable, and responsible political parties, the parliamentary form of government, wherein the real executive authority is vested in a Cabinet responsible to the legislature, would become a farce and stable government a forlorn hope. They pointed out difficulties in the emergence of strong political parties in Pakistan; a probability that the legislature might be divided into small groups separated one from the other for personal or political reasons, thus making stable government impossible. Their main contention was that a new country like Pakistan required, more than anything else, a stable and strong government. Those who favoured a full-fledged Islamic state in Pakistan also considered that parliamentary government was not in accordance with the system which existed in the early days of Islam. Their intention was that the head of the Islamic state of Pakistan should be a Muslim and responsibility for the administration of the state should primarily be vested in the head of the state, although he might delegate part of his powers to any individual or body. The first Constituent Assembly, however, expressed faith in a parliamentary form of government in the hope that it would ensure a better relationship between the executive and the legislature.[34]

The second Constituent Assembly, like its predecessor, decided in its favour, both at the centre and in the provinces.

When the second Constituent Assembly met in 1955, the relationship between the executive and the legislature, particularly the powers and position of the head of the state, assumed great importance in view of certain controversial and undemocratic actions of the head of the state under the interim

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Constitution. The framers of the Constitution had before them vivid examples in the dismissal of a Cabinet enjoying the confidence of the legislature in 1953 and the dissolution of a legislature in 1954 when it sought to curb the powers which the head of the state had tried to exercise in an authoritarian way. They wanted to ensure that such actions would not be repeated. Hence, we find that the draft presented to the second Constituent Assembly in January 1956 had to be modified considerably regarding provisions relating to the powers and position of the head of the state. A parliamentary system was sought where real executive authority vested in a Cabinet responsible to the legislature would be guaranteed within the Constitution and not, as in Britain and in some Commonwealth countries, based on conventions alone. Countries having a parliamentary system have found it necessary to provide for a separate head of state who normally exercises only ceremonial and formal functions. In most important matters he acts on the advice of the Cabinet. Still, a separate head of the state seems to be necessary in a parliamentary system because a neutral constitutional official is needed to bridge the gap between outgoing and incoming ministries, not in taking over the government but in providing the decisions evolved in bringing a new government into office.

The President and the Cabinet

The executive authority of the federation in the 1956 Constitution was vested in the President and was to be exercised by him in accordance with that Constitution.[35] The President was to be a Muslim of not less than 40 years of age and qualified for election as a member of the National Assembly. He was to be elected by an Electoral College comprising members of the National Assembly and the Provincial Assemblies in accordance with provisions outlined in great detail in the first schedule appended to the Constitution.[36] He was to hold office for five years and no one could hold the office for more than two terms.[37] The President might resign or might, on a charge of violating the Constitution or of gross misconduct, be impeached by the National Assembly by an absolute majority.[38] He would not be allowed to hold any office of profit in the service of Pakistan but was not prevented from holding or managing any private property.[39] The draft presented to the second Constituent Assembly originally provided for a Vice President but the proposal was not accepted and the Constitution provided that if the President was away from Pakistan or unable to perform his duties, the Speaker of the National Assembly would exercise the functions till the President resumed his duties or until a new President were elected.[40]

The Constitution provided for a Cabinet of ministers with the Prime Minister at its head 'to aid and advise' the President in the exercise of his functions. The President was required by the Constitution 'to act in accordance with the advice of the Cabinet' except in those matters in which he was empowered to act at his discretion. The Constitution strictly limited the discretionary powers of the President to the making of a few non-controversial appointments, such as the chairman and members of the Federal Public Service Commission, the Chief Election Commissioner, and other members of the Election Commission and the Chairman and Members of the Delimitation Commission. But the most important discretionary power of the President was to appoint from among the members of the National Assembly a Prime Minister who in his opinion was most likely to command the confidence of the majority of the members of the Assembly. While this may be a purely formal task in a clear cut two-party system, it becomes a function of great importance when the party situation is not clear. This discretionary power could very easily be misused. It was alleged that under the interim Constitution a head of the state had appointed somebody as Prime Minister who was not even a member of Parliament and 'who was flown from Washington without having any footing on the soil and planted as our Prime Minister'.[41] In the provinces too, several cases had occurred of chief ministers being nominated or imposed from outside. To ensure that the discretionary power was not misused, the Constitution provided a safeguard under Article 50 regarding the discretionary powers of the President and enjoined a ministry coming into power to call a session of the National Assembly within two months to demonstrate that it enjoyed the confidence of the legislature.

It was the duty of the Prime Minister to communicate to the President all decisions of the Cabinet and proposals for legislation and to furnish him with

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information as the President might call for.[42] The question whether any advice had been tendered by the Cabinet or a minister could not be enquired into by any court of law, nor was there any provision for countersignature by the Prime Minister or any other minister of an Act signed by the President.[43] This provision might have an effective safeguard to ensure the parliamentary nature of the executive. There was no remedy in the Constitution if the President disregarded the advice of the Cabinet except that it might resign in protest. But as the party system was not well developed, this remedy could not be an effective check on the powers of the President.

'The Prime Minister shall hold office during the pleasure of the President', such was the proposal in the provisional draft Constitution presented to the second Constituent Assembly in January 1956. But the proposal evoked great criticism and fears were expressed that this might lead to a repetition of the Cabinet dismissal of 1953. The second Constituent Assembly finally amended this as follows:

> The Prime Minister shall hold office during the pleasure of the President, but the President shall not exercise his powers unless he is satisfied that the Prime Minister does not command the confidence of the majority of the members of the National Assembly.

The Cabinet was collectively responsible to the National Assembly.[45] Although the concept of collective responsibility of the Cabinet is based on convention under the British Constitution, yet it had been expressly included in the Constitutions of India, Sri Lanka, and the Irish Republic. The 1956 Constitution followed the example of these countries by expressly including it in the Constitution.

Functions and Powers of the President

The President, on the advice of the Cabinet, was entrusted with multifarious functions. Some of the key appointments, such as those of the Chief Justice of the Supreme Court and judges of the Supreme and High Courts, the Governors of the provinces, the Attorney-General, and the principal military officers, were made by the President on the advice of the Cabinet. He would constitute the National Economic Council, the National Finance Commission, the Inter-Provincial Council, the Commission for bringing the existing laws into conformity with the injunctions of Islam, and the Organization for Islamic Research and Instruction. He also had the power to issue proclamations of political or financial emergency and could suspend a provincial government. The supreme command of the Armed Forces was vested in the President and he was conferred the power to raise and maintain the naval, military, and air forces of Pakistan. The administration of the federal capital was vested in the President. He was also given powers to grant pardon and to remit, suspend, or commute a sentence passed by any tribunal.

Similarly, the President was given certain legislative functions to be exercised on the advice of the Cabinet. Thus he could summon, prorogue, and dissolve the National Assembly on their advice. In the draft Constitution of the second Constituent Assembly there was a provision that the President might at his discretion dissolve the National Assembly if he were satisfied that it had ceased to command the confidence of the majority of the electorate. This proposal raised strong protests both inside and outside the Assembly and consequently, the Constitution provided that the dissolution should take place on the advice of the Cabinet. But what would happen if the President should dismiss a Prime Minister, appoint a new one, and dissolve the Assembly on his advice? Was the President bound to accept advice for a dissolution if a Prime Minister who had been defeated in the National Assembly should advise the President to dissolve the Assembly? It was difficult to conceive that the President would accept such advice. In such a case, he could surely dismiss the defeated Prime Minister and appoint a new one. So occasion might have arisen when, under the Constitution, the President could force a dissolution or refuse advice for dissolution.

The President could address the National Assembly and send messages to it.[45] He would cause the budget to be laid before the National Assembly and no Bill imposing taxation or involving expenditure from the federal consolidated fund could be moved without the President's recommendation. He possessed a limited veto regarding laws made by the National Assembly.[46] When a Bill was passed by the National Assembly he could either assent to it or withhold his assent. In the latter case, if the National Assembly

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again passed the Bill, with or without amendment, by a majority of two-thirds of those present and voting, the President was bound to assent to it. He could also send a Bill for reconsideration and if such a Bill were passed again by a majority of the total members of the Assembly, it had to receive his assent.

When the National Assembly was not in session, the President possessed the positive power of making laws by ordinances which were to be laid before the National Assembly and would cease to operate at the expiry of six weeks from the next meeting of the National Assembly or at such time as a resolution of disapproval should be passed by the Assembly.[47] Should the National Assembly stand dissolved, the President might by ordinance authorize the expenditure from the federal consolidated fund (whether the expenditure was charged upon that fund or not), but such an ordinance was to be laid before the National Assembly 'as soon as may be' after reconstitution of the Assembly and the normal financial procedure[48] would have to be complied with not later than six weeks from that date.

The Federal Government

Another basic feature was the federal form of the Constitution, following the decision in 1949. Although the solitary voice of the independent member, Fazlur Rahman, could be heard in the second Constituent Assembly in favour of a unitary form of government, the 1956 Constitution embodied all the characteristics of a federation: a written Constitution, dual polity, distribution of powers between the national and provincial governments, and a Supreme Court.

This federal structure was similar, in many respects, to that provided under the Government of India Act, 1935 which introduced a federal Constitution in undivided India. Federalism in Pakistan had to make room for self-expression and self-support for the units. The process of decentralization, therefore, was allowed under the 1956 Constitution to an extent which was unusual with other new federal constitutions. The federal Constitution of India, for instance, had a strong tendency towards centralization of authority and administration. A modern democratic government can hardly fulfil the wider objectives of social welfare services or full employment unless it has the power of legislation over the whole economic and fiscal field. Similarly, the nature of modern warfare is forcing a federal government to extend its sphere of operations.

In a complex modern society, the federal system could hardly be expected to work satisfactorily and smoothly without the process of centralization. Yet, the architects of the 1956 Constitution provided maximum room for decentralization in view of the number of powerful factors, political, economic, psychological, working towards demands for regional autonomy. Unless the demands were reasonably satisfied, the movement for secession which subversive elements were trying to create, might have been encouraged. On the other hand, the risk was that the decentralized structure of a weak federation might afford footholds for foreign intrigue and attack.

Turning to the distribution of legislative powers between the centre and the provinces, the powers were exhaustively enumerated in three lists—federal, provincial and concurrent, as in the Government of India Act, 1935. The extent of federal laws was extended to the whole or any part of Pakistan, including the power to make laws with extra-territorial operations. The power of a provincial legislature extended to the whole of that province or any part thereof.[49] Parliament was given exclusive power to make laws concerning thirty items in the federal list as against sixty-one under the Government of India Act, 1935, and sixty-six in the draft Constitution of the first Constituent Assembly. The subjects given to the centre included foreign affairs, comprising all matters which would bring Pakistan into relations with foreign countries; defence; currency; citizenship; foreign and inter-provincial trade and commerce; insurance and corporations set up by the federation; industries owned wholly or partially by the federation; posts and all forms of telecommunications; and minerals, oil, and gas.[50]

The provincial list was most comprehensive and included ninety-four items, as against fifty-five under the Government of India Act, 1935, and forty-eight in the draft Constitution of the first Constituent Assembly, which indicated the trend towards decentralization recognized by the second Constituent Assembly. The provincial list included, amongst others, public order, administration of justice, police, land, agriculture, local government,

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education, public health, sanitation, industries and corporations subject to the federal lists, factories, regulations of mines and mineral development subject to the federal and concurrent lists, forests, electricity, and other subjects of local interest.[51] The most important addition to the provincial list was railways which continued to be under central control at the time of the abrogation of the constitution in 1958.

The concurrent list was the smallest and included only nineteen items and was justified on the ground that there were certain matters which could not be given exclusively either to the centre or to the provinces since they might normally be dealt with by the provinces but occasions might arise when it would be desirable and necessary to deal with them on a national level. Again, the regulation of some matters by one unit might prejudice the interests of the other unit, or to secure legal and economic uniformity, federal jurisdiction might be necessary. The list dealt with such matters as civil and criminal law, scientific and industrial research, price control, economic and social planning, inter-provincial migration and quarantine, trade union, and other matters of common interest.[52]

With regard to subjects in the concurrent list, the precedence of federal legislation was guaranteed. So the Constitution had provided priority of federal legislative power over the provincial one applicable over the concurrent list, and the concurrent list had priority over the provincial, as had been provided for in the Government of India Act, 1935. In fact, the structure and content of Article 106 were identical with those of Section 100 of the Government of India Act, 1935.

The question whether residuary powers should be vested in the federal or in provincial authorities had produced lengthy discussions and controversies in the constituent Assemblies of Pakistan but under the 1956 Constitution residuary power was vested with the provincial legislatures which were to have exclusive power to make laws with respect to any matter not enumerated in the federal, provincial, or concurrent lists.[53]

The federal government was fully equipped for the conduct of international affairs. Parliament was authorized to implement treaties with laws which it might have no power otherwise to pass; a treaty could reach and control matters normally within the powers of the provinces. It was given power to make laws for implementing any treaty, agreement or convention or a decision taken by an international body even though it might deal with a matter enumerated in the provincial list, or a matter not enumerated in the provincial list, or a matter not enumerated in any of the three lists.[54]

The Chief Justice of Pakistan was assigned an important role in the settlement of disputes between the federal government and one or both provincial governments, or between the two provincial governments. He was to appoint a tribunal to settle such a dispute. The report of the tribunal was to be submitted to the Chief Justice who would forward it to the President who could make such orders as might be necessary to give effect to the report. This order must be made effective by the provinces and any action of the provincial legislature which might be repugnant to the President's order would be void.[55]

There was also provision for an inter-provincial council which the President could set up for the purpose of investigating and discussing subjects of common interest between the federation and one or both the provinces.[56] Neither a tribunal under Article 129 nor an inter-provincial council under Article 130 was set up in the duration of the 1956 Constitution.

There was no provision in the Constitution, as under the Indian Constitution, whereby the federal legislature could make laws in any provincial matters on the grounds of 'national interest'. There were, however, at least two processes which would enable the federal legislature to legislate even on a provincial subject. The first applied when a provincial legislature authorized parliament to make laws in any matter enumerated in the provincial list or any matter not enumerated in any of the three lists. An Act passed by the parliament in exercise of this power, in so far as it would affect a province could, however, be repealed by the provincial legislature.[57]

While legislation by the federal legislature under Article 107 was voluntary, the second process which would enable the federal government to intervene in provincial matters, was of far-reaching importance. This related to the power to issue a proclamation of emergency and while this was in operation,

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parliament was empowered to make laws for a province with respect to any matters not enumerated in the federal or concurrent lists.[58]

The Federal Legislature (The Parliament)

Unlike other federal constitutions of the time, the 1956 Constitution provided for a unicameral system. The first conflict relating to the federal structure in Pakistan was over the quantum of representation for the two wings of the country. After several years of acute controversy it was agreed that there should be parity of representation between East and West Pakistan. Under the draft Constitution made by the first Constituent Assembly there was provision for a second Chamber and parity of representation was provided for in the joint session of the two Houses. When the provinces and states in West Pakistan were amalgamated into a single unit by the second Constituent Assembly, the problem of representation in the federal legislature was made much simpler and it was, therefore, proposed that the legislature should have only one House in which parity of representation between East and West Pakistan could be maintained.

The parliament of Pakistan under the 1956 Constitution consisted of the President and one House, the National Assembly.[59] The National Assembly was to consist of 300 members, half elected by constituencies in East and half by constituencies in West Pakistan. Ten additional seats were provided for women, five from East, and five from West Pakistan, for a period of ten years.[60] Hence, the female citizens of Pakistan were granted double franchise for at least ten years. Parliament might alter the numbers of the members of the National Assembly provided that the parity of representation between East and West Pakistan was maintained.

Members of the National Assembly were to be elected under an electoral system for which the second Constituent Assembly did not legislate, but left it to be decided by the National Assembly after consulting the provincial assemblies. In October 1956, the National Assembly, passed an electoral law amidst scenes of riot and confusion. The Bill was passed in great haste without giving the National Assembly or the country an opportunity to judge its merits. Debate over the system of electorate, whether it should be joint or separate, had a long history behind it and had been debated at great length. The Bill provided for a joint electorate in East and a separate electorate in West Pakistan.[61] It was the most ridiculous system ever to have been thought of and was the product of party alliances and groupings prevailing at the time. It apparently sought to satisfy the exponents of both joint and separate electorates and failed to satisfy either. Subsequently, electoral law was changed to joint electorates for the whole country,[62] but the issue was alive till the abrogation of the 1956 Constitution and it had a long-lasting impact on politics in Pakistan. The Awami League, in coalition with the Pakistan National Congress, advocated joint electorates while some of the Muslim parties were still opposed to it.

A person was entitled to vote for the National Assembly (as well as the provincial assemblies) if he were a citizen of Pakistan, not less than 21 years of age, not declared by a court to be of unsound mind, and had resided within the constituency for six months before the first day of the year in which the preparation of the roll should commence. Parliament could impose other qualifications in this respect.[63]

The candidate for election to the National Assembly was to be not less than 25 years of age and qualified to be a voter. The Election Commission, on reference from the Speaker of the National Assembly, could decide questions of disqualification of a member and its decision was final. No one could to be a member of the National Assembly for two or more constituencies, though a person could seek election from more than one constituency. A member of the National Assembly could lose his seat if he remained absent for sixty consecutive sitting days. No one could be a member simultaneously of the National Assembly and of a Provincial Assembly.[64]

The President, as noted earlier, was empowered to summon, prorogue, and dissolve the National Assembly on the advice of the Cabinet. There were to be at least two sessions of the National Assembly every year, and at least one session was to take place in Dhaka, the capital of East Pakistan. This was done to remove the feeling of neglect in East Pakistan. The Assembly was to be summoned within two months of the formation of a new Cabinet. Even a minister and the Attorney-General had the right to speak and take

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part in the proceedings of the National Assembly but not the right to vote unless he were a member. The President could address or send messages to the National Assembly.[65]

The National Assembly would choose the Speaker and Deputy Speaker from its own members. They could be removed by a resolution of the National Assembly, passed by a majority of the total membership. When the National Assembly stood dissolved, the Speaker would continue his office until the convening of the first meeting of the successor elected National Assembly.[66]

The National Assembly was to frame its own rules of procedure and the validity of any proceedings in the National Assembly could not be questioned in any court. The rules of procedure were based on the spirit and substance of those at Westminster. The usual procedure in the National Assembly was that a decision would be made by a majority of votes of the members present but in some specific cases, such as the impeachment of the President, the removal of judges of the Supreme Court, the overriding of the President's suspensive veto, and amendments to the Constitution, an absolute majority of the total membership was required. No member of the National Assembly could be made liable in any proceedings in any court regarding anything said or any vote given by him in the National Assembly or its committees. The privileges of the National Assembly, committees, the members thereof, and people entitled to speak therein could be determined by an Act of parliament.[67]

The procedure in financial matters was also largely based on the system existing in England and in Commonwealth countries. The tradition of parliamentary control over public money was largely maintained. No tax, for instance, could be levied for federal purposes, except by or under the authority of an Act of parliament,[78] custody of the federal consolidated fund including the payment of money into it and withdrawal of money from it and all matters connected with public money and public accounts, were to be regulated by an Act of parliament.[69] No proposal for the imposition of taxation or for appropriation of public revenues or for borrowing of money and similar matters could be made except with the recommendation of the President, that is, it could be made only with the approval and responsibility of the Cabinet.[70]

In the budget, the financial statement was divided into two parts: one showing the expenditure charged upon the consolidated fund—the expenditure which the National Assembly could discuss but not vote upon; the other part showing the sums required for the estimated expenditures of the various departments for the financial year. Expenditures charged upon the consolidated fund included; (a) remuneration and pension of the President, salaries of judges of the Supreme Court, members of the Federal Public Service Commission, the Speaker and the Deputy Speaker, the Comptroller and Auditor-General, the Election Commissioners and members of the Delimitation Commission; (b) the administrative expenses of the Supreme Court, the Federal Public Service Commission, the department of the Comptroller and Auditor-General, the Election Commission; and (c) the debt charges binding on the federal government and sums required to satisfy any judgment, decree, or award against Pakistan by any court or tribunal and any other sum declared by the 1956 Constitution or by Act of Parliament.[71] The National Assembly was given a normal life of five years but the President, on the advice of the Cabinet, could dissolve it earlier.[72] In the case of dissolution, fresh elections were to take place within six months and no by-election could be delayed beyond three months. These were to be healthy democratic checks against prolonged rule without a parliament or any attempt to avoid the expression of public opinion through by-elections. By-elections had often been unduly delayed or evaded altogether under the interim Constitution.

Provincial Governments and Legislatures

The provincial legislatures and executives were small replicas of the national legislature. Provincial Assemblies, like the National Assembly, were unicameral and were to be directly elected by the people through universal adult franchise under the same electoral law. The relationship between the provincial Governor, provincial Chief Minister, and the Provincial Assembly closely resembled that between the President, the Prime Minister, and the

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National Assembly. The Governor could appoint and dismiss the provincial Cabinet through a procedure similar to that of the President in exercising his powers at the centre. The provincial Cabinet was also collectively responsible to the provincial legislature which could be dissolved by the Governor on the advice of his Cabinet. Contrary to section 51(5) of the interim Constitution which laid down that in the exercise of his functions with respect to the choosing, summoning, and dismissal of ministers, the Governor would be guided under the general control and would comply with such particular directions as might be given, from time to time, by the Governor-General, there was no similar provision in the 1956 Constitution. Yet, in practice, the position was not different from that under the interim Constitution. The Governor continued to be an agent of the central government which could, and did, exercise pressure in provincial politics through the Governors.

Distribution of Powers between the Centre and the Provinces

In the distribution of legislative powers between the centre and the provinces the framers of the 1956 Constitution allowed a greater decentralization than under the Government of India Act, 1935. Administrative relations between the centre and the provinces, however, changed a little. The federal system showed, a marked tendency towards unified control and authority. It was the constitutional duty of the federal government to protect each province against external aggression and internal disturbance. Although the maintenance of law and order was a provincial subject, the federal government was vested with the ultimate responsibility of ensuring the peace and safety of the country, the primary duty which no national government can afford to neglect, be it under a unitary or a federal system. The federal government was also entrusted with the task of ensuring that the government of each province was carried on in accordance with the provisions of the Constitution.[73] A provincial government would not be allowed to flout the supreme law of the land, that is, the Constitution. A provincial government was obliged to exercise its executive authority in such a manner as to ensure compliance with the Acts of Parliament and existing laws applying to that province. The central government would make laws in the federal or concurrent lists which would apply to the provinces. Although these laws might be administered by the federal authority itself, yet the Constitution enjoined upon the provincial authorities the duty of giving due effect to the federal laws prevailing or applying to the provinces and not impeding or prejudicing the exercise of the executive authority of the federation. The federal government was entitled to give direction to a province with regard to the duties of the provincial authority and was further entitled to give directions to a province in the following matters:[74]

(a) the construction and maintenance of communications declared to be of national or military importance;

(b) the measures to be taken for the protection of railways within the province (although railways were included under the provincial list);

(c) the manner in which the executive authority of the province was to be exercised for the purpose of preventing any grave menace to the peace and tranquility or economic life of Pakistan or any part thereof;

(d) the carrying into execution in the provinces of any Act of parliament in Part II of the concurrent list, such as measures to combat corruption, or price control, and economic or social planning.

There was one important provision in the 1956 Constitution which would enable the federal government to delegate a provincial government as its agent. The President might, with the consent of a provincial government, entrust either conditionally or unconditionally to that government, or to its officers, functions regarding any matter to which the executive authority of the federation extended.[75] The practice of delegation to a provincial government or their servants the duty of executing orders of the federal government had been exercised under the interim Constitution. The federal government did not have sufficient number of officers in the provinces to execute its laws or orders, hence the necessity of such delegation. The framers of the Constitution allowed this process of delegation to provincial governments to continue, thus permitting the federal government to utilize provincial executive machinery for the enforcement of federal laws.

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The Judiciary

Adequate provisions were made in the 1956 Constitution to ensure the independence of the judiciary so that 'justice could be dispensed in Pakistan in a real and unpolluted form'. The efficiency and independence of the judicial system depends to a great extent upon the method of appointment, tenure of service, and salary of the judges. The framers of the Constitution thought it desirable to include the organization of the judicial system and provisions relating to it were given in considerable length. The aim of such constitutional safeguards in the organization of the judiciary was to secure its independence as being fundamental to both the Islamic and the western concepts of justice.

Though the Supreme Court under the 1956 Constitution was the successor of the Federal Court, in the interim Constitution its jurisdiction was in some respects wider. Apart from expressed constitutional or statutory provisions there was no limit to its jurisdiction in matters decided by the High Courts.[76] The law which it would lay down was binding on all courts in Pakistan. As supreme tribunal, it was the sole judge of its jurisdiction and there was no judicial means of challenging its exercise. A judgment of the Supreme Court was binding on all courts in Pakistan; all executive and judicial authorities throughout the country also had to act in the aid of the Supreme Court and all directions, orders, decrees, or writs issued by that court were to be executed as if they were issued by the High Courts of the appropriate province.[77]

Like its predecessor, the Federal Court, the Supreme Court was entrusted with the task of interpreting the Constitution. It was specifically given the power to adjudicate in any dispute between:[78]

(a) the federal government and the government of one or both provinces, or

(b) the federal government and the government of a province on the one side and the government of the other province, or

(c) the governments of the provinces, if and in so far as the dispute should involve any:

  i. question of legal rights;

  ii. question relating to the interpretation of the Constitution.

The 1956 Constitution thus departed from the principle of parliamentary supremacy which exists in England and accepted the principle of judicial review found in the federal systems of Australia, Canada, and the United States of America. The Constitution was made the 'supreme law of the land' and the 'judiciary was made the guardian of the Constitution'.

The writ jurisdiction of the superior courts which was introduced in July 1954, was retained under the 1956 Constitution. Each High Court had the power throughout its territories to exercise jurisdiction to issue to any person or authority orders or writs. including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto, and *certiorari* for the enforcement of any of the fundamental rights guaranteed under the Constitution or for any other purpose.[79] The writ jurisdiction of the superior courts in Pakistan constitute a perpetual reminder to the executive to exercise restraint and caution as imposed under the laws of the land. The courts exercised this power in a beneficial and befitting manner and thus earned the confidence and trust of the people.

The provisions regarding judiciary in the 1956 Constitution followed the pattern set under the Second Report of the Basic Principles Committee, 1952 which was more or less included *in toto* in the draft Constitution adopted by the first Constituent Assembly in October 1954. The Supreme Court consisted of the Chief Justice and not more than six judges, a number that could, be raised by the parliament under the Act.[80] The Chief Justice was to be appointed by the President and other judges were to be appointed by the President in consultation with the Chief Justice.[81] The qualification for appointment as a Judge of the Supreme Court was either five years standing as a Judge of a High Court or fifteen years standing as an advocate or pleader of a High Court.[82] The retirement age of a Supreme court Judge was fixed at sixty-five years and he was disqualified from pleading or acting before any Court or authority in Pakistan.

The provision regarding the removal of a Judge of the Supreme Court was similar to one provided under the Constitution of India.[83] A Judge could only be removed on the presentation of an address by the National Assembly by not less than one-third of the

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total number of members of the Assembly; by the President, if after due investigation and proof of misbehaviour, or infirmity of mind or body was established, with the National Assembly votes for his removal by two-thirds of its members present and voting (but not less than a majority of total membership) on the ground of misbehaviour, infirmity of mind or body.[84] There was also provision for the appointment of acting Chief Justice in the absence of the Chief Justice or when the office became vacant.[85] There were also provisions for acting judges and adhoc judges.[86]

The Constitution provided for two High Courts, one for the province of East Pakistan, and the other for the province of West Pakistan. Each High Court was to consist of a Chief Justice and such number of other judges that the President might determine.[87] The Chief Justice of a High Court was to be appointed by the President after consultation with the Chief Justice of Pakistan and the Governor of the province concerned. In case of appointment of other judges of the High Court, the President could appoint them in consultation with the aforesaid constitutional functionaries as well as the Chief Justice of the concerned High Court.[88] The retirement age was fixed at sixtee years. The qualification for appointment as a judge of a High Court included ten years standing as an advocate or pleader of a High Court, ten years standing as a member of the civil service of Pakistan including at least three years as a district judge, or holding of a judicial office in Pakistan for at least ten years.[89] Members of the civil service in India were not qualified for appointment as judges of High Courts.[90]

A High Court judge could not be removed from his office except by an order of the President made on the ground of misbehaviour or infirmity of mind or body, if the Supreme Court, on reference being made to it by the President, reported that the judge ought to be removed on any of those grounds.[91] There was provision for appointment of acting Chief Justice when the office of the Chief Justice became vacant or he was absent or unable to perform his duties.[92] However, transfer of judges from one High Court to another was made subject to the consent of the judge being transferred and subject to the consultation with the Chief Justice of Pakistan and the Chief Justice of the High Court of which he was a judge.[93] This procedure of transfer of a judge from one High Court to another could strengthen the judiciary and its independence and could pre-empt the interference of the executive with the judiciary.

As discussed above, the High Courts were given the power to issue writs of habeas corpus, mandamus, prohibition, quo-warranto, and *certiorari*. Similar powers were vested in the Supreme Court of Pakistan to issue all such writs for the enforcement of the fundamental rights guaranteed under the Constitution.[94] This provision was apparently borrowed from the Indian Constitution (enforced in 1950) wherein the Supreme Court was empowered to issue all such writs for the enforcement of fundamental rights.[95]

Islamic Provisions

According to the Constitution, Pakistan was declared as an 'Islamic Republic' wherein the principles of freedom, equality, tolerance, and social justice as enunciated by Islam should be fully observed.

The Islamic provisions were contained in the directive principles of state policy which were not enforceable in the law courts but were supposed to serve as a guide to state authorities in the formation of policies. According to the directive principles, steps were to be taken to enable the Muslims of Pakistan individually and collectively to order their life in accordance with the Holy Quran and *sunnah*.[96]

The head of the state, the President, was to be a Muslim. The original proposal provided for a Vice President who should also be a Muslim, but the provision was not accepted. The Speaker of the National Assembly would exercise the functions of the President if he was absent from Pakistan or was unable to discharge the duties of his office owing to illness or any other cause. The Speaker might be a non-Muslim, so occasion might arise when the temporary head of the state could be a non-Muslim.

The argument for reserving the presidency for a Muslim was that Pakistan was founded on the basis of Islamic philosophy and it was, therefore, logical that the President as a symbolic head should be amongst those believing in the Muslim faith. It was further stated that as real power was vested in the parliament, therefore, reservation of the presidency for a Muslim would not reduce the non-Muslims to the position of second-class citizens. With the exception of this solitary clause there was no discrimination against any citizen on the grounds of religion, colour, race, or nationality. Moreover, adequate and generous provisions were made in the Constitution to safeguard the interests of non-Muslim minorities. Hence, there was no basis for apprehension that the introduction of an Islamic state in Pakistan would per se relegate non-Muslim citizens to an inferior status.

A more important Islamic provision laid down that 'no law shall be enacted which is repugnant to the injunctions of Islam as laid down in the Holy Quran and the *sunnah*' and that existing laws 'shall be brought into conformity with such injunctions'.[97] Whether a law was repugnant to Islam or not could only be decided by the National Assembly. Article 198 provided that the President should appoint within one year of the day of commencement of the Constitution a commission to make recommendations for bringing existing laws into conformity with the injunctions of Islam and to specify the stages by which the measures should be brought into effect. They were also to compile in a suitable form for the guidance of the National and provincial assemblies such injunctions of Islam as could be given legislative effect. The Commission was to submit its final report within five years of its appointment and might submit an interim report earlier. The report, whether interim or final, was to be laid before the National Assembly, and within six months of its receipt, the Assembly was to enact laws in respect thereof. It was made clear that nothing in this Article should affect the personal laws of non-Muslims or their status as citizens or any provision of the Constitution.

Emergency Provisions

The description of the federal structure under the 1956 Constitution would not be complete without a reference to the emergency provisions that is provided for as they greatly affected relations between the centre and the provinces. The Government of India Act, 1935 which introduced federation in the subcontinent for the first time made elaborate provisions for dealing with an emergency. Following this model, the 1950 Indian Constitution contained elaborate emergency provisions. The framers of the Pakistan Constitution also felt the need for such provisions. The draft Constitution made by the first Constituent Assembly contained detailed provisions for dealing with different types of emergencies. These were, however, subject to severe criticism from those political parties and groups which had described the first Constituent Assembly as 'unrepresentative of the people'. Curiously enough, the second Constituent Assembly in which those political groups had the opportunity to redraft the Constitution in Part IX (Articles 191–196) retained all these emergency provisions, making them even stronger in some respects.

Under Article 191, if the President was satisfied that a grave emergency existed in which the security or economic life of Pakistan or any part thereof was threatened by war or external aggression or by internal disturbance beyond the power of the provincial government to control, he could issue a proclamation of emergency which might also be issued before the actual occurrence of war or any such aggression if the President were satisfied that there was imminent danger thereof.

While this Article was being debated in the second Constituent Assembly, some of its members opposed its application to internal disturbance and wanted to restrict its application to war or armed rebellion. Another amendment sought to delete the words 'economic life of Pakistan'. The contention was that an emergency must be clearly defined, otherwise the powers would be misused. They stated that proclamation after proclamation had been made in Pakistan without sufficient cause. 'We understand threat of war, we understand external aggression, but we do not understand what is meant by internal disturbance. Anything may be internal disturbance. A movement against a particular measure of the government for the time being may be interpreted as internal disturbance'. Similarly, the term 'economic life of Pakistan' was stated to be vague. 'Anything might be considered as endangering the economic life of Pakistan'.[98] While the allegations that emergency provisions under the interim Constitution had been used on many occasions without sufficient cause contained substantial truth, this does not prove that emergency provisions to deal with internal disturbance are superfluous and a negation of democracy. Most existing federal systems grant such power to the central authority. The effects of a proclamation of emergency under Article 191 included:

(a) the power of the parliament to make laws for a province in matters which were not included in the federal or concurrent lists, that is, it would have power to legislate even in provincial matters;

(b) during a proclamation of emergency the federal executive authority had the power to give direction to a province regarding the manner in which the executive authority of the province was to be exercised;

(c) during a proclamation of emergency the President, might issue an order assuming himself, or directing the Governor of a province to assume on his behalf, all or any powers of the provincial government or any organ of the provincial government except the provincial legislature and judiciary. The President was also empowered to suspend in whole or in part the operation of any provision of the Constitution relating to any body or authority in the province except the High Court.

While emergency provisions of the type discussed above are common in existing federal systems, there was provision for another type of emergency, namely, the breakdown of constitutional machinery in a province, which was peculiar to the constitution of Pakistan. (The 1950 Indian Constitution, is also an exception). This unique feature had its origin in the Government of India Act, 1935 which elaborated provisions relating to an emergency due to a failure of the constitutional machinery, both at the centre and in the provinces.[99] There was no provision in the 1956 Constitution relating to the breakdown of constitutional machinery at the centre; it retained provisions to meet a constitutional crisis only in the provinces. Thus, under Article 193 of the 1956 Constitution, if the President, on the receipt of a report from the Governor of a province, was satisfied that a situation had arisen in which the government of the province could not be carried on in accordance with the provisions of the Constitution, he could, by proclamation, assume to himself, or direct the Governor to assume on his behalf, all or any of the functions or powers of the provincial government or any organ or body of the provincial government except the provincial legislature and judiciary and the National Assembly might be authorized to exercise the powers of the provincial legislature. The President could also suspend the operation of any provisions of the Constitution relating to any body or authority in the province except the High Court. The President, during a proclamation under this Article, was empowered to authorize expenditure from the provincial consolidated fund in anticipation of approval by the National Assembly.

The net effect of a proclamation under Article 193, as under 92A of the interim Constitution, would be to suspend parliamentary government in a province. This power of the central government to suspend democratic process in a province was the subject of severe criticism in many quarters and it appeared to many people that this power had previously been exercised by the central government not always with sufficient cause or justification, and seemingly abused on more than one occasion for party or sectional interests. It was an excellent weapon in the hand of the central government to put pressure and exert influence on provincial politics. When this Article came before the second Constituent Assembly it was under heavy fire from the exponents of provincial autonomy and provincial rights: 'We had a bitter experience of section 92A in Pakistan in the different provinces of Pakistan. During the last eight years of independence we have seen how this provision has been misused most undemocratically and for political ends. A misuse is likely to creep in and such misuse may arise when the provinces and the central government are not governed by the same political party; if the central government is of the opinion that the political party which is running the government in the province is to be suppressed it will not hesitate in the interest of good government to let it carry on purely for political motive, but it may bring about an influence to bear upon the President to suspend the democratic process in the province'.[100]

The type of emergency for which the 1956 Constitution made provisions related to the financial stability or credit of Pakistan. If the President were satisfied that a situation had arisen whereby the financial stability or credit of Pakistan or any part thereof was threatened, he could, after consultation with the provincial Governors or with the Governor of the province concerned, issue a proclamation of financial emergency. During the period of a financial emergency, the federal government could direct a province to observe such principles of financial propriety and any other direction required for restoring financial stability and credit, including a direction to reduce the salaries and allowances of government servants. Even the salaries of judges of the Supreme Court or the High Courts could be affected by such a regulation. A financial emergency could not extend for more than a total period of six months.

The salient features of the 1956 Constitution, along with their historical perspective, have been discussed above. Other features included the composition of the Election Commission of Pakistan for holding periodic elections to the National Assembly and the Provincial Assemblies;[101] determination of conditions of service of persons in the service of Pakistan;[102] formation of All-Pakistan Services;[103] and establishment and composition of Public Service Commissions.[104] Urdu and Bengali were declared as the state languages.[105]

The 1956 Constitution or any of its provision could be amended by an Act of Parliament provided it was passed by a majority of the total number of members of the National Assembly and by the votes of not less than two-thirds of the members of that National Assembly present and voting. However, no amendment of a constitutional provision affecting the interest or composition of provinces or any of the provinces could be made unless such an amendment had been approved by a resolution of each Provincial Assembly, or, if it applied to one province only, of the Provincial Assembly of that province.[106] The condition of assent by the President appeared to be necessary for a constitutional amendment. However, no provision was made regarding the eventuality if the President withheld his assent or wanted the National Assembly to reconsider the amendment. It appears that the President could kill an Amendment Bill of the constitution by withholding his assent. This meant that the President had a veto power over Constitutional amendments and there was no way for the National Assembly to override it.

Notes

1. Chaudhry, G.W., *Constitutional Development in Pakistan*, 1969, Longman Group Ltd., London, pp. 130-31.
2. Constitution of Islamic Republic of Pakistan 1956, Article 4.
3. Ibid., Article 7.
4. Choudhry, G.W., *Constitutional Development in Pakistan*, *supra*, note 1, p. 132.
5. Constitution of the Islamic Republic of Pakistan, Art. 192.
6. Ibid., Article 5(1).
7. Ibid., Article 5(2).
8. Ibid., Article 6.
9. Ibid., Article 22.
10. Ibid., Article 14.
11. Ibid., Article 16.
12. Ibid., Article 17.
13. Ibid., Article 15.
14. Ibid., Articles 8, 10, and 11.
15. Ibid., Article 18.
16. Ibid., Article 13.
17. Ibid., Article 20.
18. Brohi, A.K., *Fundamental Law of Pakistan*, 1958, Din Muhammad Press, Karachi, p. 309.
19. Ibid., Article 25.
20. Ibid., Article 28.
21. Ibid., Article 29.
22. Ibid., Article 28(b).
23. Ibid., Articles 28 & 29.
24. Ibid., Article 26.
25. Ibid., Article 24.
26. Ibid.
27. Ibid., Article 30.
28. Ibid., Article 27.
29. Ibid., Article 28(c).
30. Ibid., Article 31.
31. Ibid., Article 29(f).
32. In the matter of including Directive Principles of Policy, the Constitution of 1956 followed the example of Indian Constitution wherein also such Principles are provided under its Articles 36 to 51.
33. Brohi, A.K., *Fundamental Law in Pakistan*, *supra*, note 18, p. 313.
34. Chowdhry, G.W., *Constitutional Development in Pakistan*, *supra*, note 1, pp. 116.
35. Constitution of Islamic Republic of Pakistan, 1956; Article 39.
36. Ibid., Article 32.
37. Ibid., Article 33.
38. Ibid., Article 35.
39. Ibid., Article 34.
40. Ibid., Article 36.
41. Referring to the appointment of Mr Muhammad Ali Bogra by Governor-General Ghulam Muhammad.
42. Constitution of Islamic Republic of Pakistan, 1956; Article 42.
43. Ibid., Article 37.

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44. Ibid., Article 37(5).
45. Ibid., Article 52.
46. Ibid., Article 57.
47. Ibid., Article 69.
48. Ibid., Articles 63, 65, and 66.
49. Constitution of Islamic Republic of Pakistan, 1956, Article 105.
50. Ibid., Article 106(1), Fifth Schedule - Federal List.
51. Ibid., Article 106(3), Fifth Schedule - Provincial List.
52. Ibid., Article 106(2), Fifth Schedule - Concurrent List.
53. Ibid., Article 109.
54. Ibid., Article 108.
55. Ibid., Article 129.
56. Ibid., Article 130.
57. Ibid., Article 107.
58. Ibid., Article 193.
59. Ibid., Article 43.
60. Ibid., Article 44.
61. Electorate Act, 1956 (Act XXXVI of 1956). See PLD 1956 Central Acts and Notifications 482.
62. Electorate (Amendment) Act, 1957 (Act XIX of 1957). See PLD 1957 Central Statutes 276.
63. Constitution of Islamic Republic Pakistan, 1956, Article 143.
64. Ibid., Articles 45, 46, and 47.
65. Ibid., Articles 50, 51, 52, and 53.
66. Ibid., Article 54
67. Ibid., Articles 55 & 56.
68. Ibid., Article 60.
69. Ibid., Articles 61, and 62.
70. Ibid., Article 59.
71. Ibid., Articles 60, and 61.
72. Ibid., Article 50.
73. Ibid., Article 125.
74. Ibid., Article 126.
75. Ibid., Article 127.
76. Ibid., Articles 157, 158, and 159.
77. Ibid., Article 163.
78. Ibid., Article 156.
79. Ibid., Article 170.
80. Ibid., Article 148.
81. Ibid., Article 149(1).
82. Ibid., Article 149(2).
83. The Constitution of India, Article 124.
84. Constitution of Islamic Republic of Pakistan, Article 151.
85. Ibid., Article 152.
86. Ibid., Articles 153 and 154.
87. Ibid., Article 165.
88. Ibid., Article 166.
89. Ibid., Article 167.
90. The Constitution of India, Article 217.
91. Constitution of the Islamic Republic of Pakistan, 1956, Article 169.
92. Ibid., Article 168.
93. Ibid., Article 172.
94. Ibid., Article 22.
95. The Constitution of India, Article 32.
96. Constitution of the Islamic Republic of Pakistan, 1956, Article 23. See also preamble.
97. Ibid., Article 198.
98. Debates of the Constituent Assembly of Pakistan, 17 February 1956.
99. Sections 45 and 93 of the Government of India Act, 1935.
100. Debates of the Constituent Assembly of Pakistan, 9 February 1956.
101. Constitution of Islamic Republic Pakistan, 1956, Articles 137 and 138.
102. Ibid., Articles 179, 180, 181, and 182.
103. Ibid., Article 183.
104. Ibid., Articles 184, 185, 186, 187, 188, 189, and 190.
105. Ibid., Article 214.
106. Ibid., Article 216.

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The Constitution of 1962

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The report of the Constitution Commission was presented to Ayub on 6 May 1961.[1] It was examined by him and his Cabinet. A sub-committee of the Cabinet was appointed, with Manzoor Qadir, the Foreign Minister, as its chairman and Mohammad Shoaib, Zulfiqar Ali Bhutto, A.K. Khan, and Muhammad Ibrahim as its members. The sub-committee examined the report of the Constitution Commission and prepared a report of its own. It is alleged that the sub-committee was appointed and a report was obtained from it only in order to frustrate the report of the Constitution Commission. In this manner, Ayub could obtain alternate recommendations from two reports and had the option to choose those which were to his liking and inclination.[2] The 1962 Constitution was very different from the recommendations made by the Constitution Commission, Ayub favoured a presidential form of government which allowed the President to choose his own Cabinet, and also gave him the right to nominate provincial Governors.[3] Ayub disagreed with the recommendations of the Constitution Commission regarding restricted adult franchise; bicameral legislatures; creation of the office of the Vice-President; and procedure for resolving disagreements between the President and the legislature over the budget and money bills.[4] Ayub also received support for his views from a number of individuals, prominent among them were Mohammad Zafarullah Khan, Ghulam Ahmad Parvez, and Pir Ali Muhammad Rashdi. Zafarullah attacked the Constitution Commission's recommendations that political parties should be allowed to function but agreed with the Constitution Commission that there should be no sudden jump to universal adult franchise. He completely agreed with Ayub's electoral arrangement, and supported a presidential form of government. Parvez called the establishment of political parties a *shirk*. Rashdi went to the extent of suggesting a monarchy for Pakistan, with Ayub as the first monarch. Ayub was obviously pleased with such support.[5]

The two reports and their findings were examined by the Cabinet. The constitutional proposals were finally discussed at the Governors' Conference held in Rawalpindi from 24 to 31 October 1961. The Governors' Conference was attended by the provincial governors, central ministers, and senior officers. It was decided that the President would announce the outline of the constitution soon after the governors' Conference, but subsequently it was announced in its entirety in March 1962. While the Governors' conference was under way, Ayub declared in his speech on the third anniversary of 'Revolution Day' that the Constitution would be capable of producing a strong and stable government, with an emphasis on a strong executive.

The Governors' conference had appointed a drafting committee with Manzoor Qadir and the Law Secretary, Abdul Hamid, as members. The drafting committee was authorized to enlist, if necessary, the services of experts on constitutional law.[6] It took about four months to finally draft the Constitution which was announced in a broadcast to the nation by Ayub on 1 March 1962. In his speech, Ayub referred to the pledge given on 8 October 1958, to restore democracy in Pakistan and claimed that the new Constitution represented the fulfilment of that pledge.

The 1962 Constitution contained 250 Articles divided into twelve parts and three schedules. It had a lengthy preamble, similar to the 1956 Constitution, based on the language of the Objectives Resolution. Significantly, the name initially given to Pakistan was 'The Republic of Pakistan',[7] which was a clear departure from the 1956 Constitution wherein Pakistan was named 'The Islamic Republic of Pakistan'.[9] This fact clearly demonstrates Ayub's secular mindset. Its most distinguished feature was the introduction of the presidential system of government.

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Presidential Form of Government

The main emphasis of the 1962 Constitution of was a strong executive, expressed through the office of the President. The fundamentals of the system are enunciated below:

1. The President was elected independently of the legislature and had a direct mandate from the electors to perform the executive functions of government;
2. He was to hold office for a fixed term and could not be removed from office by an adverse vote in the legislature against any of his policies, but only by a special process of impeachment;
3. The legislature was elected independently and had a fixed term;
4. The legislature functioned independently of the executive and could not be dissolved by the executive or the President;
5. The legislature was the supreme law-making body of the country and no proposal could become law unless voted by this body;
6. The judiciary was responsible for the interpretation of laws and executive orders in the light of the principles embodied in the Constitution.

The Ayub government gave the following arguments in support of the presidential system: one, the presidential system had special advantages to offer to a nation which had recently emerged out of a colonial past and was embarking upon an ambitious programme of social reform and economic development political unity. Two, the presidential system, by giving executive authority to one individual with a mandate from the entire nation, could facilitate the growth of unity in the country.[9]

In introducing the 1962 Constitution, Ayub stated:

> We have adopted the presidential system as it is simpler to work, more akin to our genius and history, and less liable to lead to instability, a luxury that a developing country like ours cannot afford.[10]

Political leaders, however, continued to press for a parliamentary system. In a joint statement made by political leaders of different shades of opinion in East Pakistan including Husain Shaheed Suhrawardy, they reaffirmed their preference for the parliamentary system.

Powers of the President

Under the 1962 Constitution, the President was the repository of all powers. It was commonly said that the President under the Constitution was like the clock-tower of Faisalabad where all the bazaars converged.

The Constitution provided that there would be a President elected in accordance with the Constitution and the law.[11] The President was required be a Muslim, not less than 35 years of age, and qualified for election as a member of the National Assembly.[12] He was to be elected indirectly by an electoral college in accordance with the provisions outlined in the Constitution. The lower age limit for the President under the 1956 Constitution was 40 years, as against 35 years under the 1962 Constitution.

The system of election, that is, whether the President should be elected directly or indirectly, was discussed and examined in great detail by the Constitution Commission as well as by the people in general. The Constitution Commission favoured direct election on the basis of a restricted franchise. Ultimately, the system of indirect election through local government institutions was adopted. The President was to be elected by an electoral college formed by not less than 80,000 electors, equally distributed between the two provinces (East and West Pakistan). Each province was to be divided into not less than 40,000 territorial units to be known as electoral units.[13] Any citizen who was at least 21 years of age, of sound mind, and was a resident of or was deemed by law to be resident of an electoral unit would have the right to be enrolled. Those enrolled for an electoral unit would elect from amongst themselves a person of at least 25 years of age who would be an elector for that unit.[14] The electors thus elected in both the provinces formed the electoral college of Pakistan and this electoral college elected the President by a majority vote.[15]

The electoral college was to have other functions conferred upon them by law, particularly in relation to matters of local government. Thus, the electoral college was elected not simply for the election of the President and the legislatures but was also to act as the institution of local government. Critics of the system pointed out that, apart from the disadvantages of indirect election, it would wreck local government

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institutions by involving them in party politics. The argument put forward by the government was that if the electoral college was divorced from affairs of local government it would become a political forum and there was no means, specially for an unsophisticated electorate, to judge the members of the electoral college on the basis of their concern for public interest.[16]

When the constitution was implemented in 1962, Ayub became the first President of Pakistan in accordance with the result of the referendum held in February 1960. His term of office was three years,[17] since he had already served two years of his term from 1960.

Selection of Candidates for Election to the Office of President

If the number of candidates for election to the office of President exceeded three, the Speaker of the National Assembly was to convene a joint session of the members of the national and provincial assemblies to select three of the candidates for election, the remaining candidates thus becoming ineligible. This screening was not applicable to a person who was holding the office of the President, that is, if the incumbent President was also a candidate, the number of candidates could be four.[19]

The term of the President was fixed for five years. A person was not eligible for re-election if he had held the office of the President for a continuous period of more than eight years. However, with the approval of a joint sitting of the members of the national and provincial assemblies, such a person could be eligible for election of the President for more than two terms. In fact, with the approval of the legislatures there seemed to be no limit to the number of terms for which a person might be eligible for re-election as President.[19]

Impeachment and Removal of the President

The President could be impeached by the National Assembly on a charge of violating the Constitution, or for gross misconduct, in accordance with the following procedure:

One-third of the total members of the National Assembly had to give written notice to the Speaker for the removal of the President. The notice had to set out particulars of the charge and it was to be transmitted to the President by the Speaker. The resolution for removal of the President was not to be moved in the National Assembly earlier than fourteen days or later than thirty days after the notice of the resolution. The President had the right to appear or be represented before the National Assembly when it discussed the motion for impeachment. The President was to be removed from office if the resolution for impeachment was passed by votes of not less than three-fourths of the total members of the Assembly.[20]

A significant feature of the impeachment procedure was that if the resolution for removal of the President failed to obtain one-half of the total number of members of the National Assembly, the movers of the resolution would cease to be members of the National Assembly. A similar procedure had been provided for the removal of the President on the grounds of his physical or mental incapacity.[21]

The President was not allowed to hold any office of profit in the service of Pakistan but was not prevented from holding or managing private property. Protection of the President from legal proceedings while he was in office was provided.[22] Similar protection was provided in the 1956 Constitution.

Independence of the Executive Authority

The executive authority of the Republic was vested in the President to be exercised by him in accordance with the provisions of the Constitution and the laws.[23] The President was responsible for regulating the allocation and transaction of the business of the central government, and for establishing divisions of the government, he also had to specify the manner in which the orders and instruments made in pursuance of the authority vested in him should be expressed and authenticated.[24] The Constitution had conferred on the President adequate powers not only for the carrying out, or administration of laws, enacted by the legislature but also for the conduct of foreign affairs and of war; he had military and legislative powers and the limited judicial functions of granting pardons and reprieves.[25] He was the ceremonial head of state, chief of the executive, and also retained substantial power in law-making.

The President had the power to make all key appointments. He appointed the Governors, central ministers,

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Auditor-General, judges of the Supreme Court and the High Courts, the Election Commissioner, the Central Public Service Commission, the Council on Islamic Ideology, the National Finance Commission, the National Economic Council, the Attorney-General, among others.[26] The supreme command of the defence services was also vested in the President. He had the power (a) to raise and maintain the Defence Services of Pakistan, and (b) to grant commissions and to appoint chief commanders of those services and to determine their salaries and allowances.[27]

The list of powers granted to the President under the 1956 Constitution were also comprehensive but that constitution provided a parliamentary system in which the President was expected to exercise his extensive executive powers on the advice of the Prime Minister and the Cabinet who were responsible to the legislature. Under the 1962 Constitution, the President could exercise these powers independently. There was, no doubt, a council of ministers, but their advice was not binding on the President, nor were his ministers responsible to the legislature.

Kitchen cabinet

The President and his Cabinet

The President could appoint a council of ministers to assist him in the performance of his duties. The Constitution did not elaborate on the exact relationship between the President and his council of ministers. He was not bound by the advice of his ministers and the ministers held office at the pleasure of the President and could be removed from office any time, without the President having to assign any reason therefor.[28]

The President was empowered not only to dismiss a minister or a Governor, but also to disqualify him from public office for a period of five years on a charge of gross misconduct in relation to his duties. The Governors or ministers would have the option of agreeing to the disqualification or of having the matter referred to a tribunal for inquiry. In the case of a central minister, the tribunal was to consist of a Judge of the Supreme Court appointed by the President after consultation with the Chief Justice.[29] The Constitution provided that if a member of the National Assembly should be appointed as a member of the President's council of ministers, he would lose his seat in the National Assembly,[30] but this provision was amended by the President within the first three months of the enforcement of the constitution.[31] The amendment would have greatly altered the character of the council of ministers. The ministers as members of the legislature would have some followers in the legislature and as such would exercise an influence unusual in a Presidential Cabinet. The strong sentiment among the politicians in favour of some form of parliamentary system in Pakistan would also consolidate and strengthen their position. As the President had to depend on the support of the legislature, it was not conceivable that a minister with a powerful backing in the legislature would be treated as a mere adviser.

It is generally believed that the need for the Presidential Order, enabling the ministers to retain their seats in the National Assembly, arose because of Muhammad Ali Bogra, who had been offered the office of Foreign Minister. Bogra had also been elected to the National Assembly from East Pakistan and he was not willing to lose his seat in the National Assembly on becoming a minister. The Presidential Order was declared by the Supreme Court of Pakistan as *ultra vires* upholding the earlier decision of the Dhaka High Court in this matter.[32] It was held that the amendment of Article 104(1) of the constitution by the Presidential Order so as to omit the word 'minister' from clause (1) of Article 104, with a view to enable ministers appointed from amongst members of the Assembly to retain their seats in the National Assembly after appointment was inoperative, because the Presidential Order was itself void and *ultra vires* the Constitution. The Supreme Court interpreted Article 224(3) of the constitution, which enabled the President to pass Orders for removing any difficulty that might arise within three months after the commencing day, so as to mean that the principal duty laid upon the President and those working with him was to bring the constitution and all its provisions into operation as an integral whole, without variation whatsoever. The responsibility, under Article 224(3), at the highest level was given to vary provisions in the constitution, not for the purpose of altering the constitution itself, but in order that the constitution as a whole should be brought into force. The provision of the constitution debarring the members of the council of ministers from continuing as members of the National Assembly had a very important purpose, namely, to bring into operation a Presidential form of

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government, in which the executive was to be completely separated from the legislature. The Court observed that instead of performing the major duty enjoined upon the President to bring these fundamental provisions into operation, they were altered in a fundamental way so as to change the form of government from the purely Presidential form to an anomalous parliamentary form.

Presidential Powers and the Legislature

The Presidential system is based on the theory of the separation of powers between the legislature and the executive. The executive usually not being an integral part of the legislature though retaining considerable power and influence in the legislative organ. Under the Parliamentary system, the executive and the legislature are united and the head of the state is an integral part of the Parliament. However, in the Presidential system adopted under the 1962 Constitution, the President was made an integral part of the central legislature which consisted of the President and one House, known as the National Assembly of Pakistan.[33]

The President could summon the legislature and prorogue it. The Speaker of the National Assembly could also summon the National Assembly at the request of not less than one-third of the total number of members of the National Assembly and when the Speaker had summoned the legislature, it was he who could prorogue it and not the President.[34]

The President was also empowered to dissolve the National Assembly at any time subject to the condition that in case of dissolution the President also had to quit office and there were to be fresh elections for both the President and the National Assembly.[35] This, no doubt, was a healthy check against arbitrary dissolutions of the National Assembly as the President himself would have to face the hazards of an election, and it was not likely that the President would exercise the power frequently or lightly. The idea of summoning, proroguing, and dissolving the legislature by the President seems again more in accord with a Parliamentary, rather than a Presidential form of government. As a further safeguard, the President was not given power to dissolve the National Assembly when it was to consider a resolution of impeachment against him under Article 13 or 14.[36]

In case of a difference of opinion between the President and the National Assembly, the President could call for a referendum on the matter to be conducted among the members of the electoral college. The matter to be referred to a referendum would be put in the form of a question capable of being answered either yes or no.[37]

The President had the right to address the National Assembly and to send messages to it. The members of the President's council of ministers and the Attorney-General had the right to speak and otherwise take part in the proceedings of the National Assembly or of any of its Committees, but were not entitled to vote.[38]

Certain categories of Bills could not be introduced or moved in the National Assembly without the previous consent of the President, for example, a Bill relating to preventive detention.[39] The President had the right to veto Bills passed by the National Assembly. The American President also has veto power though not an absolute one since the Congress can override his veto if the Bill is passed again by a two-third vote in both Houses. The 1962 Constitution gave a more comprehensive and effective veto power. When a Bill had been passed by the National Assembly, the President could do one of the following:

(a) give assent to the Bill;
(b) withhold assent from the Bill; or
(c) return the Bill to the National Assembly with a message requesting that the Bill or a particular provision of the Bill be reconsidered and amendments suggested in his message be considered.

If the President did not take any of these three steps, the Bill would be deemed to have received his assent after the expiry of thirty days.[40]

If the President withheld assent from a Bill, the National Assembly could reconsider it and if the Bill was passed again by the votes of not less than two-thirds of the total number of members of the National Assembly, the Bill would again be presented to the President for assent. If the President returned the Bill for reconsideration and if the Bill was again passed by the National Assembly, without amendment or with amendment as suggested by the President in his message, by a simple majority vote, or if the Bill was passed by the National Assembly with amendments

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not suggested by the President by votes of two-thirds of the total members of the National Assembly, the Bill would be presented to the President for assent.

When the Bill was sent to the President for the second time for consideration, the President could do either of the following:

(a) give assent to the Bill;

(b) refer the Bill to a referendum under Article 24 in the form of a question whether the Bill should or should not receive assent.

If the Bill received majority votes of the total number of members of the electoral college, the President would be deemed to have assented to the Bill.[41]

Legislative Powers of the President

The President had the power to make and promulgate ordinances which had the same force of law as Acts of the central legislature. The President could promulgate an ordinance when the National Assembly stood dissolved or was in session and he was satisfied that circumstances existed which necessitated immediate legislation. Such an ordinance, however, had to be laid before the National Assembly as soon as practicable. If the ordinance was approved by the National Assembly, it was deemed to have become an Act of the central legislature. In case of disapproval by the National Assembly, the ordinance ceased to have any effect after the expiry of the prescribed period. The power of the President to make laws by ordinance was restricted to matters with respect to which the central legislature had competence.[42] The power to legislate by ordinance was provided under both the interim and the 1956 Constitutions.

Presidential Control over the Budget

Critics of the Presidential system in Pakistan stressed again and again the possibilities of deadlocks between the President and the legislature over the budget in the absence of democratic traditions and conventions similar to those which have grown in the United States of America. Nobody could deny or dismiss altogether the validity of this apprehension. The Constitution Commission examined this issue in great detail and suggested a procedure by which the ultimate control of the public purse by the legislature was retained by providing the President with a limited power of certification for a period not exceeding one year. But if the deadlock continued for more than one year, both the President and the legislature would have to face election. When the proposals of the Constitution Commission were reviewed by the Cabinet sub-committee, the recommendation of the Constitution Commission in respect of budgetary matters was not accepted. The Cabinet sub-committee was supposed to have evolved a new formula under which no new taxation or increase in the existing taxation or in existing expenditure could take place unless the National Assembly approved.[43] Ayub while introducing the 1962 Constitution stated that in order to reduce the chances of conflict between the National Assembly and the President, and to prevent paralysis of the administration, and to ensure continuance of ongoing schemes, the constitution provided that a previously passed budget would not be altered without the permission of the President and new taxation would not be levied without the consent of the National Assembly. This, according to Ayub, was based on the theory that the President was finally responsible to the country for administration and members of the National Assembly represented the feeling of the people who had to pay taxes.[44]

The 1962 Constitution drew a distinction between recurring expenditure and non-recurring expenditure. While the National Assembly had the power to discuss, debate, and pass opinion on non-recurring expenditure, it would have no power to reject this item of the budget. It was only with regard to new expenditure and new taxation that the legislature had been given unqualified power.

Custody of the central consolidated fund, including payment of money into, and withdrawal of money from, that fund, and all matters connected with public money and public accounts were to be regulated by an Act of the central legislature or, subject to any such Act, by rules made by the President.[45] The President was to present the budget, and the annual financial statement before the National Assembly. The financial statement was divided into two parts. Part one showing the expenditures charged upon the consolidated fund, the expenditure which the National Assembly could discuss, but not vote upon.[46]

As a safeguard for continuation of the economic development projects it was provided that the

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financial statement might specify in relation to a project the sum required not for the current year but also for the subsequent years of the project. Once the National Assembly had approved the project, the expenditures for the subsequent years could be placed before the National Assembly, but it would have no right to reject them.[47] This particular provision regarding the development projects was suggested by the Administrative Committee which examined proposals before the 1962 Constitution was finally drafted. The argument in favour of this restriction on the powers of the legislature was that these projects were vital to the economic development of the country and as such they should not be left to the whims of the legislature. Once the National Assembly had approved them, it should be bound to grant money for the subsequent years. It was pointed out that in the past development projects were often subjected to partisan or sectional considerations and consequently had been hampered.[48]

After consideration of the annual budget estimate by the National Assembly, the President had the responsibility of causing the schedule of authorized expenditures to be prepared showing (i) the sums to meet expenditures upon the central consolidated fund, (ii) sums granted or deemed to have been granted by the National Assembly under Article 41. No money was to be withdrawn from the central consolidated fund unless provided for in the schedule of authorized expenditures as authenticated by the President and laid before the National Assembly for information.[49]

Provisions for supplementary and excess budget estimates as well as provisions for unexpected expenditure had been provided in the 1962 Constitution.[50] If for any reason the schedule of authorized expenditure for a financial year could not be authenticated before the commencement of that year, the President could authorize withdrawal from the central consolidated fund of amounts to meet expenditures provided for in the annual budget estimates, but this was restricted to expenditures charged upon the central consolidated fund and recurring expenditures.[51]

No proposal relating to Money Bills, namely, no proposal for imposition of taxation, or for the appropriation of public revenues, or for borrowing of money and similar matters, could be made except with the recommendation of the President.[52] As regards taxation, Article 48 provided that no tax could be levied except by or under the authority of an Act of the central legislature.[53]

Emergency Powers of the President

If the President was satisfied that a grave emergency existed in which Pakistan or any part of Pakistan was threatened by war or external aggression or in which the security or economic life of Pakistan was threatened by internal disturbances beyond the power of a provincial government to control, the President could issue a proclamation of emergency. The proclamation of emergency had to be laid before the National Assembly 'as soon as it was practicable', there being no fixed time-limit. The President could revoke a proclamation when satisfied that the grounds on which it was issued had ceased to exist.[54]

During a time of emergency, the President was authorized to make and promulgate such ordinances as might appear to him to be necessary to meet the emergency. The President could exercise this extraordinary legislative power even when the National Assembly was in session.

With the revocation of the proclamation of emergency the ordinances made by the President ceased to have effect unless such ordinances had been approved by the National Assembly. One significant aspect of the emergency powers of the President was that the President's power to make laws by ordinance was again restricted within the legislative competence of the central legislature.

Although the constitution did not prescribe any time-limit, yet there was a safeguard under Article 109 which laid down that there should be at least two sessions of the National Assembly in a year and not more than 180 days should intervene between the last sitting of the National Assembly in one session and its first sitting in the next session. Since there was no provision that during an emergency the President would have any power to suspend any clause of the constitution, the National Assembly had to be summoned within 180 days of its last session, and this indirectly gave a time-limit during which President could rule without the aid of the National Assembly.

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A Centralized Federal System

After independence, a highly centralized federal system was established in Pakistan under the interim constitution. There were a number of factors responsible for the dominance of the centre over the provinces. The Government of India Act, 1935 as well as the 1956 Constitution provided for the centre's dominance over the provinces and most importantly political and financial controls of the centre over the provinces. If the centre had exercised this power in a broad national perspective, the dominance of the centre might have been an asset. Unfortunately, however, in the formative stages of Pakistan's nationalism, those in power at the centre during the political turmoil and instability in Pakistan of the 1950s could not inspire confidence among the people of East Pakistan and the result was a great sense of frustration and bitterness in East Pakistan against the centre. This is the reason why when the 1956 Constitution was framed, there were repeated demands for a weak centre in the second Constituent Assembly.

The political parties with predominant following in East Pakistan did not accept the 1956 Constitution as containing sufficient provincial autonomy. The fact was that even under the 1962 Constitution, the central government continued to dominate, and the provincial and regional feelings continued to grow, particularly over the economic development of the country.

The distribution of legislative powers under the Government of India Act, 1935 was unique in its character. It had three lists of powers. Following the model of the Government of India Act, all the constitutional drafts made in Pakistan and the 1956 Constitution also divided the lists of subjects into central, concurrent, and provincial. Similarly, in India, the same method of distribution on the basis of three lists had been followed. The 1962 Constitution, however, provided for a much simpler method of distribution of powers, under which there was only one list of subjects of national importance, all other subjects were left to the provinces.[55] The central government, however, was given overriding powers in matters concerning the security of the country, coordination between the provinces, and economic development. It was provided that the central legislature would have exclusive power to make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan with respect to any matter enumerated in the third schedule of the constitution.[56] The subjects given to the centre included defence, external affairs, inter-provincial trade and commerce, national economic planning and national economic coordination, currency, foreign exchange, central banking, insurance, nuclear energy, mineral oil and natural gas, industry owned wholly or partly by the central government or by a corporation set up by the centre, preventive detention for reasons connected with defence, external affairs, and the security of Pakistan. There were in all forty-nine items in the central list as against thirty in the 1956 Constitution, sixty-one under the Government of India Act, 1935, and sixty-six under the draft constitution of the first Constituent Assembly.

A Unicameral Central Legislature

The 1962 Constitution, like the 1956 Constitution, provided for a unicameral system though most of the federal systems in the world have a bicameral system. The central legislature consisted of the President and one House known as the National Assembly of Pakistan.[57] It had 156 members on the basis of parity of representation between East and West Pakistan. There were 150 elected constituencies, half elected by constituencies in East and the other half by constituencies in West Pakistan. Six seats were reserved for women—three from East Pakistan, and three from West Pakistan.[58] Whereas, under the 1956 Constitution, the seats reserved for women were for a period of ten years, there was no such time-limit under the 1962 Constitution. Women could also contest general seats in the National Assembly. Thus, female citizens in Pakistan enjoyed a double franchise. The term of the National Assembly was fixed for five years unless it was sooner dissolved by the President.[59]

The members of the National Assembly were to be elected under the same system as was provided for election of the President, that is, indirectly by the members of the electoral college. A candidate for election to the National Assembly had to be at least 25 years of age and his name had to appear on the electoral

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roll for any electoral unit. The constitution specified the disqualification which could prevent a person from being elected as a member of the National Assembly.[60] A person could not, at the same time, be a candidate for election to more than one seat in any Assembly or to a seat in more than one Assembly. If a person who was a member of one Assembly was elected to another Assembly, then he would lose his seat in the previous Assembly, of which he was a member.[61]

The President could summon and prorogue the National Assembly. The Speaker could summon the National Assembly on the requisition of one-third of the members and when the Speaker summoned the National Assembly, only he could prorogue it. If the offices of the President, Speaker, and Deputy Speaker, were vacant at any time, the Chief Justice of the Supreme Court could summon the National Assembly.[62]

No member of the National Assembly was liable to any proceedings in any court in respect of anything said or any vote given by him in the National Assembly or any of its committees. The privileges of the National Assembly, its committees, the members thereof and a person entitled to speak therein could be determined by law.[63] It was provided that if a member of the National Assembly was elected as President or appointed as a Governor or minister or to any other office of profit in the services of Pakistan, he would cease to be a member of the Assembly.[64]

There were two interesting and novel provisions under the 1962 Constitution with regard to 'instruction in law-making' and 'conduct of members'. The Speaker of an Assembly was expected to make such arrangements as were necessary to ensure that the members of the Assembly understood the functions of the Assembly as an organ of the state and of their responsibilities as its members.[65] Similarly, it was provided that when the Speaker of an Assembly was satisfied that a member of the Assembly had committed a breach of the rules framed by the Assembly relating to the conduct of the members in such a way as to have been guilty of gross misconduct, he would refer the matter for inquiry to the Supreme Court (in case of the National Assembly) or to the High Court (in the case of a Provincial Assembly) and if the court was satisfied that the member had been guilty of gross misconduct, he ceased to be a member of the Assembly.[66]

Governors and Provincial Legislatures

The Provincial Legislatures and executives were smaller replicas of the national legislatures and executives, subject to overriding control and supervision of the President over the provincial executives. The provincial executives under the constitution were directly subordinate to the President inasmuch as the provincial government, the head of the provincial executive was appointed by and held office during the pleasure of the President. The Governor was not merely a figurehead but the holder of the real executive authority in the province. The provincial Cabinet was responsible to the Governor who, however, could not appoint or remove a Provincial Minister without the concurrence of the President.[67] It was further provided that Governor of a province should, in the performance of his functions, be subject to the direction of the President.[68]

Relations between the provincial Cabinet and the Governor and the provincial executive and legislature were more or less the same as in the central government. The procedure for the dissolution of a Provincial Assembly was, however, different. In cases of conflict between the provincial government and the Provincial Assembly, the conflict could be referred to the National Assembly and if the National Assembly decided in favour of the Governor and if the President concurred, the Governor could dissolve the Provincial Assembly.[69]

The financial procedure in the provincial legislature resembled that of the central legislature and the powers of the provincial legislature in respect of money matters were similarly curtailed.

The provincial governments were structured in a manner similar to the central government. The Governor, like the President, was the chief executive of a Province and selected his council of ministers.[70] He could appoint Parliamentary Secretaries and the Advocate-General.[71] However, the Governor, being an appointee of the President, had to work under the direction and supervision of the President. Although several ideas under the 1962 Constitution were borrowed from the Constitution of the United States of America, yet there was major digression in the matter of appointment of Governors. The Governors of the states in the United States are elected like the President, for a fixed term and enjoy autonomy within their own sphere.

The provisions regarding Provincial Consolidated Funds and Public Moneys of provincial governments were similar to the provisions regarding Central Consolidated Fund and Public Moneys of the central government respectively. Financial procedure of the provinces was similar to the financial procedure of the centre.[72]

Relations between the Centre and the Provinces

A provincial legislature was given more power to make laws for the province or any part of the province with respect to any matter other than those enumerated in the central list.[73] The central legislature, however, could legislate on any matter connected with a provincial subject on the grounds of national interest in relation to the security of Pakistan, including the economic and financial stability of Pakistan, planning, co-ordination, or the achievement of uniformity in respect of any matters in different parts of Pakistan.[74] The central legislature could also legislate on a provincial subject when the provincial legislature authorized the central parliament to make any laws in a matter not enumerated in the third schedule. If a resolution to that effect was passed by the provincial legislature, the central legislature had the power to make laws in provincial matters but any law made in pursuance of this power could be amended or repealed by an Act of the provincial legislature.[75]

In case of conflict between the central and provincial laws the latter had to give way to the former to the extent of such repugnancy.[76] The 1962 Constitution, like the 1956 Constitution, had provided predominance of the central legislative powers over provincial powers. Such was the provision also under the Government of India Act, 1935 and the same is the case with the Indian Constitution.

Residuary power had been vested in the provincial legislatures which had an undefined residuum of power to make laws with respect to any matter not enumerated in the third schedule. The question whether residuary powers should be vested in the federal or provincial authorities produced lengthy discussion and controversy in the Constituent Assemblies of Pakistan. Those who wanted to make the centre strong naturally wanted this power to remain with the central authority, arguing that it should have as free a hand as possible to meet the changing needs and requirements of society. In the Indian Constitution, the residuary subjects are with the centre. The supporters of provincial autonomy in Pakistan were equally firm in demanding residuary powers for the provinces and ultimately the 1956 Constitution vested the residuary power in the provinces; this practice was retained under the 1962 Constitution.

Both the Government of India Act, 1935 and the 1956 Constitution contained detailed provisions relating to the administrative relation between the centre and the provinces. The 1962 Constitution, however, contained hardly any provision in this respect. It was provided that executive authority of the central government extended in all matters with respect to which the central legislature had exclusive power to make laws under clause (1) of Article 131.[77] Where a law was made by the central legislature on a provincial subject and if the law provided that such law was to be administered by the central government, the central executive authority might be extended to the execution of such law. The extent of the executive authority of the province was defined to include all matters over which the legislature of the province had power to make laws.[78] Other than these two Articles there is no further provision as to the administrative relation between the centre and the provinces. The President could delegate with the consent of a provincial government functions in relation to any matter in which the executive authority of the central government extended.[79]

Distribution of Financial Resources between the Centre and the Provinces

Under the 1962 Constitution, the allocation of the proceeds of the taxes and duties collected and administered by the central government to the provinces were as follows:

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i. 50 per cent of the income tax including corporation tax, as compared to 50 per cent of income tax excluding corporation tax and taxes collected in Karachi under the previous arrangement.

ii. 60 per cent of the sales tax as against 50 per cent in the previous arrangement.

iii. 60 per cent of the excise duties on tobacco, tea, and betel nuts were allocated to the provinces as against 50 per cent under the previous arrangement.

iv. 100 per cent of the export duties on jute and cotton would go to the provinces as compared to 62.5 per cent of the export duties on jute allotted to East Pakistan under the previous arrangement. Under the new arrangement both East and West Pakistan would receive 100 per cent share from the joint pool of export duties on jute and cotton on the basis of population.

The basis of allocation had also been changed. According to the previous arrangement, income tax and excise duties were distributed broadly in the ratio of 55 per cent to West Pakistan and 45 per cent to East Pakistan and sales tax was distributed on the basis of collection. The new basis of allocation as regards sales tax was 70 per cent to be allocated on the basis of population and 30 per cent on the basis of incidence, that is, the point of collection, and as regards the remaining taxes, they were distributed on the basis of population.[80]

As regards the distribution of the power to tax between the centre and the provinces, the 1962 Constitution did not alter the scheme of distribution as given under the interim and the 1956 Constitution. The President, however, was to constitute a National Finance Commission consisting of the central Finance Minister and provincial Finance Ministers and such other persons as the President might appoint after consultation with the Governors of the provinces.[81] The Commission was to make recommendations to the President as to the distribution between the central and the provincial governments of the proceeds of the central taxes.

The National Economic Council was to be appointed by the President by nominating its members.[82] The functions of the National Economic Council were to review the overall economic development of Pakistan. It was stressed that in formulating the plans, the National Economic Council was to ensure that disparities between the provinces, and between different areas within a province, in relation to income per capita should be removed and the resources of Pakistan, including resources in foreign exchange, be used and allocated in such a manner that disparities between the provinces should be removed in the shortest possible time. It was further stressed that the duty of each government should be to make the utmost endeavour to achieve this object of removing economic disparity between the provinces.

An Independent Judiciary

When Ayub decided to restore constitutional government and the 1962 Constitution was in process of being drafted, there was an almost universal demand for restoration of the full jurisdiction and powers of the courts and the incorporation of a Bill of Rights under the new constitution. The Shahabuddin Commission stressed and emphasized the fact that the independence of the judiciary should be maintained as had been the practice for a long time and any inroad into it, which had been found necessary during the martial law period, should not be treated as a precedent. The Shahabuddin Commission recommended all the safeguards to ensure the independence of the judiciary as recognized under the 1956 Constitution. The recommendations of the Shahabuddin Commission relating to the powers of the judiciary and fundamental rights were, however, modified by the cabinet sub-committee when giving final touches to the 1962 Constitution.

The security of tenure of office and other conditions which give trust and confidence to the judiciary were guaranteed in the 1962 Constitution. The method of removal of judges of the superior courts was, however, made different from that of the 1956 Constitution. Under that constitution, judges of the Supreme Court would hold office till the age of 65 years unless, of course, they were removed from office on the ground of misbehaviour or infirmity of mind or body by an Order of the President, following an address by the National Assembly praying for such a removal. Under the 1962 Constitution, the President was to appoint a council to be known as the Supreme Judicial Council, consisting of the Chief Justice and the two next senior judges of the Supreme Court, and the Chief Justice of each High Court.[83] If, on information received from the Supreme Judicial Council, or from other sources, the President was of the opinion that a judge of the Supreme Court or of a High Court might be incapable of performing the duties of his office by reason of physical or mental incapacity or might have been guilty of gross misconduct, he was to direct the Supreme Judicial Council to enquire further into the matter and remove the judge from office if need be. The method of removal of the judges under the 1962 Constitution was on the same lines as that recommended by the first Constituent Assembly in its draft constitution of 1954. The idea behind the new method was that legislatures in the country were not yet mature and competent enough to decide the issues relating to the removal of judges. It had indeed been suggested in some quarters that for some time to come, legislatures might not have the requisite integrity and competence to sit in judgment over a superior court judge.

It would be incorrect to say that the judiciary had no part in interpreting the constitution. The original power under the 1962 Constitution of the Supreme Court included jurisdiction in any dispute between the central government and a provincial government, or between two provincial governments. Similarly, the appellate jurisdiction of the Supreme Court provided that an appeal from a judgment, decree, order or a sentence, would lie as of right if the High Court should certify that the case involves a substantial question of law as to the interpretation of the constitution.[84] Thus, Articles 57 and 58 appeared to be in conflict with Article 133 which laid down that responsibility for deciding whether a legislature had power under the constitution to make a law was that of the legislature itself, and that the validity of a law would not be called in question on the ground that the legislature by which it was made had no power to make the law. How could the judiciary settle disputes between the central and a provincial government, or interpret the constitution, if it had no power to decide the constitutionality of enactments passed by any legislature?

The first amendment of the 1962 Constitution, made in 1963, however, greatly changed this position.[85] The judiciary was vested with full power to pass judgment over the *vires* of the legislature. Judicial control over the executive from the inception of the 1962 Constitution had been fully maintained. As to the judicial review of executive action, the 1962 Constitution had faithfully preserved the jurisdiction of the courts, on the lines of the common law of England. The substance of the former writ jurisdiction which were greatly valued and cherished in Pakistan had been preserved under the Constitution of 1962 though the latin names of *habeas corpus*, *mandamus*, *certiorari*, and *quo-warranto* had not been mentioned.[86]

Other provisions relating to the Judiciary regarding appointment of the Chief Justice and judges of the Supreme Court; the Chief justices and judges of the High Courts; their retirement age; appointment of acting Chief Justice, acting judges and ad hoc judges of the Supreme Court; appointment of acting Chief Justice and Additional judges of the High Courts; transfer of judges; and their remuneration were identical or similar to the provisions of the 1956 Constitution.[87]

Elections through the Electoral College

As discussed above, the Constitution of 1962 introduced indirect elections not only for the President but also for the National as well as Provincial Assemblies. The Basic Democrats, that were elected, constituted the electoral college for the election of the President and the Assemblies. The Basic Democrat, who was elected for the local self government, was called elector and the electors in both provinces constituted the electoral college for five years. On the expiry of five years, the electoral college stood dissolved. However, the functions performed by these electors in relation to matters of local government would not be disturbed by the dissolution of the electoral college.[88] An electoral roll had to be maintained for each electoral unit.[89] The qualification for being elected as an elector was that he had not to be less than 25 years of age.[90]

The system of indirect election to the Assemblies, in particular, was quite unusual for a democratic constitution and created a strong possibility of political corruption and purchase and sale of votes.

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After all a member of the National Assembly was elected by about 500 to 550 electors on the average and a member of a Provincial Assembly was elected by half as many electors. Hence, the inherent possibility of purchase of votes in such a set-up. Furthermore, the members of the legislatures are representatives of the people at large in a democratic system and ought to be elected by the people through universal suffrage. In this system, as given by the new constitution, the representatives of the people were not elected by the people themselves.

Indirect election to the office of the President is not unusual in other countries. The constitutions of India, Germany, Italy and quite a few other countries provide for indirect elections for the Presidency based on an electoral college consisting of the central and provincial legislatures. But it must be borne in mind that in these countries, there is parliamentary form of government and the President is only a figure head. The real power rests with the Prime Minister and the cabinet. In the presidential system of government, the President has dual capacity of the head of state as well as the head of government. Thus, most of the constitutions providing for the presidential system require the President to be elected by the people of the country directly on the basis of adult franchise.

Islamic Character of the Constitution

The preamble, so far as the Islamic character of the constitution was concerned, was almost identical with that of the 1956 Constitution. The preamble followed the Objectives Resolution in laying emphasis on the principles of democracy, freedom, equality, tolerance, and social justice, with the qualification that these principles should be observed as enunciated by Islam.

Islamic provisions were continued, as in the 1956 Constitution, in the Directive Principles where according to the constitution, 'the Muslims of Pakistan should be enabled individually and collectively to order their lives in accordance with the fundamental principles and basic concepts of Islam and should be provided with the facilities whereby they may be able to understand the meaning of life according to those principles and concepts.[91]

Further, it was laid down in the Principles of Policy that (i) teaching of the Quran and Islamiat to the Muslims of Pakistan should be made compulsory—the word Islamiat was not included in the relevant Article of the former constitution; (ii) unity and observances of Islamic moral standards would be promoted among the Muslims of Pakistan; (iii) proper organization of *zakat*, *waqfs*, and *mosques* should be ensured.[92] It was provided that the bonds of unity among Muslim countries should be preserved and strengthened.[93]

The head of the state, the President, was to be, as in the 1956 Constitution, a Muslim.[94] Under the 1956 Constitution also the Presidency was reserved for the Muslims and the Constitution Commission favoured the retention of this clause.

Article 1 of the 1956 Constitution designated Pakistan an 'Islamic Republic'. It was laid down that 'Pakistan shall be a federal republic to be known as Islamic Republic of Pakistan'. The relevant clause of the new constitution laid down simply that the 'state of Pakistan shall be a republic under the name, the "Republic of Pakistan".'[95] The word 'Islamic' was dropped. When the National Assembly met in 1962, there was a demand that the word 'Islamic' should be reintroduced. There was justification for this demand. If Islamic provisions were to be maintained, there was no reason why the republic should not be designated an Islamic Republic. The first amendment, therefore, rectified the anomalous position.

The most important Islamic provision in the 1956 Constitution was Article 198 which laid down that no law should be enacted which would be repugnant to the injunctions of Islam as laid down in the Holy Quran and *sunnah* and that existing laws should be brought into conformity with such injunctions. This Article 198 provided that the President would appoint a commission to make recommendations as to the measures for bringing existing laws into conformity with the injunctions of Islam and as to the stages by which measures should be brought into effect and to compile in a suitable form for the guidance of National and Provincial Assemblies such injunctions of Islam as could be given legislative effect. But it was the legislature which was given the final authority to accept or reject the recommendations of the Islamic Commission. So, ultimately it was the National Assembly which would decide whether a particular

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law would be repugnant to the injunctions of Islam and would also decide how far and which or what existing laws should be brought into conformity with the Islamic injunctions.

The 1962 Constitution substituted Article 198 of the 1956 Constitution with a simple clause on the 'principles of law making' to the effect that 'no law should be repugnant to Islam'.[96] The responsibility of deciding whether a proposed law disregarded or violated Islam or was otherwise in accordance with the principles of law making was that of the legislature concerned. This provision was not enforceable in the law courts and it was one of the principles which the law makers had to bear in mind.

The 1962 Constitution provided for an Advisory Council of Islamic Ideology to be appointed by the President. It was to consist of not less than five or not more than twelve members who would be appointed on such terms and conditions as the President might determine. In selecting the members of the council, the President was to have regard to the persons' understanding and appreciation of Islam and of the economic, political, legal, and administrative problems of Pakistan. The members were to hold office for a period of three years. The President might remove a member from office if a resolution recommending his removal was passed by a majority of the total members of the council.[97]

The function of the council was to make recommendations to the governments, both central and provincial, as to the steps and means which would enable and encourage the Muslims of Pakistan to order their lives in accordance with the principles and concepts of Islam. A more important function of the council, however, was to advise the National Assembly, a Provincial Assembly, the President or a Governor, on any question referred to the council for advice as to whether a proposed law disregarded or violated or was otherwise not in accordance with the principles of law-making enumerated under Article 6 of the constitution.[98]

The advice of the council was not binding on the legislature or the President or the Governor. The responsibility of deciding whether a proposed law did or did not disregard any of the principles of law-making was that of the legislature concerned. The council was given only an advisory power and the legislature itself was the final arbitrator.

The Islamic Research Institute which was provided for under Article 197 of the late constitution, was retained under the new constitution. It was provided that there would be an institution to be known as the Islamic Research Institute which was to be established by the President.[99]

Conclusion

The principal objections to the 1962 Constitution were the Presidential system, the indirect franchise, and the non-justiciability of fundamental rights. Ayub was not willing to consider the preference of the East Pakistanis for parliamentary form of government. He felt very strongly about the state structure he had created under the 1962 Constitution and removal of any vital element from the constitution, in his opinion, would cause the whole edifice to collapse. He was convinced that only a Presidential form of government could ensure Pakistan's unity and hence, there could be no tempering with this feature of the constitution. He felt that all the powers of state should be concentrated in the hands of the President who alone could guarantee unity, integrity, and solidarity of the state of Pakistan.

Notes

1. President Ayub's Broadcast of 1 March 1962, *Speeches and Statements of F.M. Mohammad Ayub Khan*, Vol. IV, p. 170.
2. Ayub was well aware of the views of Manzoor Qadir and Bhutto who had already written articles in support of Ayub's ideas on future constitution. A document drafted by Manzoor Qadir on 26 May 1960 and the other titled 'Thoughts on constitution' by Bhutto on 10 October 1959 had already voiced what Ayub desired in the future Constitution by way of limited and indirect franchise, centralized structure and very powerful presidency. Altaf Gauhar in his biography of Ayub, at page 176, has referred to his Personal Papers in regard to these documents.
3. Ayub Khan, Mohammad, *Friends, Not Masters*, 1967, pp. 205-206, Oxford University Press, London.
4. Ibid., pp. 212-16.
5. Gauhar, Altaf, *Ayub Khan—Pakistan's First Military Ruler*, 1994, Sang-e-Meel Publications, pp. 179-81 and 184-6.

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6. Choudhry, G.W., *Constitutional Development in Pakistan*, 1969, p. 178, Longman Group Ltd., London.
7. The Constitution of the Republic of Pakistan, Part I Article 1. PLD 1962 Central Statutes 143.
8. The Constitution of the Islamic Republic of Pakistan, Part I, Article 1. PLD 1956 Central Acts and Notifications 54.
9. A Pledge Redeemed—a pamphlet circulated by the Government of Pakistan in March 1962, explaining and justifying the Constitution. Quoted by G.W. Choudhry, *Constitutional Development in Pakistan, supra*, note 7, p. 190.
10. *Speeches and Statements of F.M. Mohammad Ayub Khan*, Volume IV, p. 170.
11. The Constitution of 1962, Article 9.
12. Ibid., Article 10.
13. Ibid., Article 155.
14. Ibid., Articles 156, 157, and 158.
15. Ibid., Article 165.
16. A Pledge Redeemed, *supra*, note 9.
17. The Constitution of 1962, Article 226.
18. Ibid., Article 167.
19. Ibid., Articles 165 and 166.
20. Ibid., Article 13.
21. Ibid., Article 14.
22. Ibid., Article 116.
23. Ibid., Article 31.
24. Ibid., Article 32.
25. Ibid., Article 18.
26. Ibid., Articles 33, 36, 50, 66, 92, 144, 145, 147, 182, 191, and 201.
27. Ibid., Article 17.
28. Ibid., Article 118.
29. Ibid., Article 121.
30. Ibid., Articles 103 and 104.
31. Removal of Difficulties (Appointment of Ministers) Order, 1962. President's Order No. 34 of 1962. PLD 1962 Central Statutes 647.
32. Fazlul Quadir Chowdhry v Mohammad Abdul Haque, PLD 1963 S.C. 486, upholding the Judgment of the Dhaka High Court in Mohammad Abdul Haque v Fazlul Quadir Chowdhry, etc., PLD 1963 Dhaka 669.
33. The Constitution of 1962, Article 19.
34. Ibid., Article 22.
35. Ibid., Article 23.
36. Ibid.
37. Ibid., Article 24.
38. Ibid., Article 25.
39. Ibid., Article 26.
40. Ibid., Article 27.
41. Ibid., Article 29.
42. Ibid., Article 29.
43. Choudhury, G.W., *Constitutional Development in Pakistan, supra*, note 6, p. 203.
44. *Speeches and Statements of F.M. Mohammad Ayub Khan*, Vol. IV, p. 173.
45. The Constitution of Pakistan, 1962, Article 38.
46. Ibid., Article 41.
47. Ibid., Article 42.
38. Choudhry, G.W., *Constitutional Development in Pakistan, supra*, note 6, pp. 204-205.
49. The Constitution of 1962, Article 43.
50. Ibid., Articles 44 and 45.
51. Ibid., Article 46.
52. Ibid., Article 47.
53. Ibid., Article 48.
54. Ibid., Article 30.
55. Ibid., Third Schedule to the Constitution.
56. Ibid., Article 131.
57. Ibid., Article 19.
58. Ibid., Article 20.
59. Ibid., Article 21.
60. Ibid., Article 103.
61. Ibid., Article 105.
62. Ibid., Article 22.
63. Ibid., Article 111.
64. Ibid., Article 104.
65. Ibid., Article 112.
66. Ibid., Article 113.
67. Ibid., Article 82.
68. Ibid., Article 66.
69. Ibid., Article 74.
70. Ibid., Article 82.
71. Ibid., Articles 84 and 85.
72. Ibid., Articles 86, 87, 88, and 89.
73. Ibid., Article 132.
74. Ibid., Article 131(2).
75. Ibid., Article 131(3).
76. Ibid., Article 134.
77. Ibid., Article 135.
78. Ibid., Article 136.
79. Ibid., Article 143.
80. Choudhry, G.W., Constitutional Development in Pakistan, Supra, note 6, pp. 227-8.
81. The Constitution of 1962, Article 144.
82. Ibid., Article 145.
83. Ibid., Article 128.
84. Ibid., Article 58.
85. Constitution (First Amendment) Act, 1963. Act I of 1964. PLD 1964 Central Statutes 33.
86. The Constitution of 1962, Article 98.
87. Ibid., Articles 49, 50, 52, 53, 54, 55, 92, 94, 95, 96, 99, and 124.
88. Ibid., Article 158.
89. Ibid., Article 156.
90. Ibid., Article 158(1).
91. Ibid., Principles of Policy, Para 1.
92. Ibid.
93. Ibid., Para 21.
94. Ibid., Article 10.
95. Ibid., Article 1.
96. Principles of Law Making, Para 1.
97. Ibid., Articles 199, 200, 201, 202, and 203.
98. Ibid., Article 204.
99. Ibid., Article 207.

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The Constitution of 1973

It has been discussed earlier that the 1973 Constitution was adopted with the consensus of all the political parties in the National Assembly. Undoubtedly, no constitutional document can be described as perfect. It is always a product of compromises amongst various political parties and forces present within the constitution-making body. Nevertheless, the 1973 Constitution embodied the best possible arrangement to accommodate the various political parties, political issues and demands, economic interests, parties' manifestos, and so on. Pakistan People's Party (PPP), the majority party in the National Assembly, had promised in the general elections of 1970 to introduce an egalitarian set-up in Pakistan. The National Awami Party (NAP) was the main opposition party in the National Assembly, with a strong presence in the assemblies of the NWFP and Balochistan. It championed the cause of provincial autonomy. NAP also had the support of another party in these provinces, Jamiat-i-Ulema-i-Islam (JUI). Hence a formula had to be devised which could strike a balance between the conflicting demands of provincial autonomy and a strong centre.

It was also necessary to reach a compromise between the Islamic and the socialist concept. The PPP had landed itself in difficulty by raising three apparently irreconcilable slogans: Islam is our faith, democracy is our politics, and socialism is our economy. The Islamic and socialist ethos were satisfied through Articles 2 and 3 of the Constitution respectively. Article 2 declared Islam as the state religion of Pakistan and Article 3 provided for the elimination of all forms of exploitation and equitable distribution of economic resources in keeping with the ability and work put in by individuals.

Another sticky point was the distribution of powers between the president and the Prime Minister, since a national consensus had been arrived at (at least it was so perceived) on the rejection of the presidential form of government (as introduced in the 1962 Constitution) and introduce a federal parliamentary form of government (as was done in the 1956 Constitution). There can be no cavil with the proposition that in a parliamentary set-up, real powers rest with the cabinet headed by the prime minister, and the president is only a figurehead. Nevertheless, the president does become, in certain parliamentary democracies, a repository of power in difficult emergency conditions and thus plays a vital role by exercising the real powers of the state. This issue was resolved in a lopsided manner, reducing the president to a rubber-stamp and making the prime minister all powerful. The orders of the President had to be counter-signed by the prime minister to be valid. An unusual expression, particularly in constitutional jargon, was used to describe the prime minister as the chief executive of the federation.[1] Hence, it was made amply clear that the executive powers of the federation would vest in the prime minister.

But for a few Articles pertaining to constitutional matters, the framers of the 1973 Constitution followed the pattern of the earlier Constitutions of 1956 and 1962. Even the language used in the earlier Constitutions was retained in a majority of the Articles.

This Constitution, like the earlier ones, was lengthy and detailed. It contained 280 Articles divided into twelve parts and six schedules. Part I dealt with the Republic and its territories and other introductory matters; Part II with fundamental rights and directive principles of policy; Part III with the federation; Part IV with the provinces; Part V with relations between the federation and the provinces; Part VI with property, contracts, and suits; Part VII with judicature; Part VIII with elections; Part IX with the Islamic provisions; Part X with emergency provisions; Part XI with amendment of constitution; and Part XII with miscellaneous, temporary, and transitional provisions. Of the six schedules, the first one dealt with the laws constitutionally protected; the second with election of the President; the third with oaths and affirmations; the fourth with legislative lists; the fifth with powers of the Supreme Court and the remuneration of judges; and the sixth with the laws altered, repealed, or amended without the previous sanction of the President.

Fundamental Rights

Like the previous Constitutions of 1956 and 1962, the new Constitution provided for the fundamental rights of the citizens. It laid great emphasis on these rights by asserting that if any existing law or custom or usage having the force of law was inconsistent with any provision of fundamental rights, it would be void to the extent of inconsistency and that no authority in Pakistan, whether the federal government, the National Assembly, a provincial government, or legislature, or any local authority, was competent to make any law, regulation, or any order which might be repugnant to any provisions of the fundamental rights. If any such law, regulation, or order was made, it would, to the extent of repugnancy be void.[2] The judiciary was given the power to enforce fundamental rights and the courts were to decide if a law was repugnant to any of their provisions.

The familiar democratic rights and freedoms such as freedom of speech and expression, of assembly and association, of movement and profession were all provided for in the constitution, with the usual qualifications. Regarding civil rights, familiar rights such as rights to life, liberty, and property were granted, again with the usual qualifications and safeguards. An important provision from the standpoint of civic liberty laid down that if a person were arrested he/she could not be detained in custody without being informed, 'as soon as may be' of the grounds for such arrest, and he or she could not be denied the right of legal consultation and defence. Further, a person arrested or detained was given the right to be produced before the nearest magistrate within a period of twenty-four hours and no further detention was allowed except on an order of the magistrate. Serious restrictions were laid down regarding laws relating to preventive detention. No law could authorize the detention of a person beyond one month unless the appropriate Review Board headed by a Supreme Court judge in case of a federal law, and by a High Court judge in case of a provincial law, after affording opportunity to the *detenu*, came to the conclusion before the expiry of such period that there was sufficient cause for such detention. It was also provided that the detaining authority should communicate to the *detenu*, within one week, the grounds of his detention so that he could have representation against such order. It was also provided that no detention under a law for preventive detention could exceed eight months in a span of two years for acting in a manner prejudicial to the public order and twelve months in any other case.[3] Such safeguards were, however, not applicable to any person arrested or detained for anti-national activities under any law providing for preventive detention.

During an emergency, the President could, by an order, suspend the enforcement of some of the fundamental rights guaranteed to the citizens under the Constitution. The right to move any court for the enforcement of fundamental rights could also be suspended.[4]

The principal fundamental rights guaranteed by the 1973 Constitution are briefly described below:

1. All citizens are equal before the law and entitled to equal protection of laws.[5]
2. No person should be deprived of life or liberty save in accordance with the law.[6]
3. No person should be punished for an act which was not punishable when it was committed.[7]
4. There should be no discrimination on grounds of religion, race, caste, sex, or place of birth with regard to access to places of public entertainment, recreation, welfare, or utility.[8]
5. All forms of slavery, servitude, forced labour, torture, or cruel or inhuman treatment or punishment were declared illegal.[9]
6. All duly qualified citizens were made eligible for appointment in the service of the state, irrespective of religion, race, caste, sex, descent, or place of birth, provided that for an initial period of ten years it would not be unlawful for the state to reserve posts in favour of members of any sex or class or residents of any area to secure their adequate representation in the service of Pakistan.[10]

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7. Every person was guaranteed a right to acquire, hold and dispose of property in any part of Pakistan subject to reasonable restrictions and public interest under the law.[11] No person should be deprived of his property save in accordance with the law. The right to property was subject to a number of constitutional restrictions including acquisition of enemy property; acquisition of property for providing housing, education; maintenance of sick, old, and infirm; acquisition of property acquired through unfair means and in an illegal manner; or acquisition of property in excess of the maximum limit provided under a law for land reforms. However, the new constitution did not specifically provide for fair compensation. Adequacy of compensation provided under any law relating to compensation for acquisition of property, could not be called in question in any court.[12]
8. All citizens were guaranteed (a) freedom of speech, expression, and press; (b) freedom to assemble peacefully; (c) freedom of association; and (d) the right to move freely throughout Pakistan and to reside in any part of the country.[13]
9. Freedom of conscience and the right to profess, practise, and propagate any religion, subject to public order and morality, were guaranteed. Every religious association and every sect thereof was guaranteed the right to establish, manage, and maintain its religious institutions.[14]
10. No person attending any educational institution should be required to receive religious instruction or to attend religious worship other than that of his own community or denomination. No religious community should be prevented from providing religious instruction for pupils of that community in any educational institution which it maintained. No person should be compelled to pay any special taxes, the proceeds of which were specifically appropriated for the propagation or maintenance of any religion other than his own.[15]
11. The dignity of man and the privacy of home were declared inviolable. Procuring evidence through torture was prohibited.[16]
12. Protection was provided against double punishment and self incrimination.[17]
13. Every citizen was guaranteed the freedom to enter upon any lawful profession or occupation and to conduct any lawful trade or business. However, this freedom was subjected to such qualifications as might be prescribed by law.[18]
14. Other fundamental rights granted by the constitution included as under:
    (a) Safeguards against discrimination in services on the ground only of race, religion, caste, sex, residence, or place of birth. This right was, however, subjected to regional quotas for some time.[19]
    (b) Non-discrimination in respect of access to places of public entertainment or resort. However, special provisions could be made for women and children.[20]
    (c) Right to preserve and promote distinct language, script, and culture.[21]

Directive Principles of State Policy

Like the earlier Constitutions, the new Constitution also included Directive Principles of Policy. It was made the responsibility of each organ and authority of the state and those performing functions under them to act in accordance with these principles.[22]

These principles are enumerated as under:

1. Steps to be taken to enable Muslims to order their lives in accordance with the Holy Quran and the *sunnah*. The state should endeavour to facilitate learning of Arabic, to promote observance of Islamic moral standards, and to secure the proper organization of *zakat*, *auqaf* and mosques.[23]
2. Securing the well-being of the people, prevention of the concentration of wealth and means of production in the hands of a few, providing of basic necessities of life, reducing disparity of income, provision of food, clothing, housing, education, and medical relief for citizens incapable of earning their livelihood owing to unemployment, sickness, or similar reasons.[24]
3. Promotion of social justice by removing illiteracy; providing of free and compulsory

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secondary education; ensuring inexpensive and expeditious justice; making provisions for securing just and humane conditions of work; enabling the people of different areas to participate fully in all forms of national activities; preventing prostitution, gambling, alcoholic liquors, drugs, etc.[25]

4. Discouragement of parochial, tribal, and racial feelings among Muslims.[26]
5. Strengthening of the bonds of unity between Muslim countries and promotion of peace and goodwill among the peoples of the world.[27]
6. Protection for all legitimate rights and interests of the non-Muslim minorities.[28]
7. Protection of marriage, the family, the mother, and the child.[29]
8. To ensure full participation of women in all spheres of law.[30]
9. To promote local government institutions.[31]
10. To eliminate *riba* as early as possible.[32]
11. To enable people from all parts of Pakistan to participate in the armed forces of Pakistan.[33]

It is interesting to note that in the new Constitution, separation of the judiciary from the executive was not relegated to the chapter of the principles of policy. This principle was, instead, included in the operative part of the Constitution. It became a dictate of the Constitution and the separation was required to take place within three years.[34]

Parliamentary Form of Government

After the sad experience of the presidential form of government under the 1962 Constitution, Pakistan was ready to revert to the parliamentary form on the pattern of the 1956 Constitution. As discussed earlier, serious resistance had come from Bhutto to the re-introduction of the parliamentary system, resulting in the resignation of a law minister. Nevertheless, Bhutto finally succumbed to the pressure in favour of the parliamentary form primarily because his party had committed itself to it in the general elections of 1970. However, the political happenings and bargainings prior to the adoption of the Constitution were not without impact on the ultimate shape of the parliamentary set-up under the new Constitution. Bhutto succeeded in introducing some basic changes in the parliamentary system as it had been known in the subcontinent. The changes thus introduced tried to address the following fears rooted in the constitutional and political experience in Pakistan:

i. The parliamentary system is vulnerable to frequent changes in government with the resultant instability, insecurity, and uncertainty.
ii. Presidents, under the parliamentary system, try to increase their powers and influence by indulging in partisan politics, thus weakening and undermining the governments.
iii. The political oppositions act with irresponsibility and indulge in Byzantine intrigues, thus rendering the government in power weak and ineffective. Often, the opposition collaborates with the President or uses the provision for vote of no-confidence as a constant sword hanging over the head of the government in power.
iv. A powerful bureaucracy in cohorts with the President, army, and/or the opposition could undermine a government.
v. All these factors are aggravated especially when the party in power does not command a clear majority and is dependent upon smaller parties or groups to keep itself in power. This situation is ideal for manipulations and intrigues, whether they are launched by the President, army, opposition, bureaucracy, or small political parties or groups.

In brief, the primary concern before Bhutto and other constitution-makers was: how to ensure a stable government under the parliamentary system? This concern was addressed in the new Constitution by introducing the following changes:

(a) The office of the Prime Minister was made extremely powerful and the office of the President was made correspondingly weak, ineffective, and dependent. The Prime Minister was more than the sum of the Cabinet put together and the President was less than a figurehead. The Prime Minister became the Chief Executive of the federation.[35] The President could not exercise his option to appoint a member of the National Assembly as Prime Minister, of course subject to his obtaining a vote of confidence later on. The Prime Minister had to be elected immediately after the election of Speaker and Deputy Speaker by the National Assembly with the votes of the majority of its membership.[36] The President's veto over legislation was completely done away with. He had only seven days to give his assent to a Bill passed by the parliament and if he failed to do so within such a period, the Bill would become law.[37] The President was required to act on the advice of the Prime Minister which was binding on him. Such advice was made non-justiciable.[38] The President was also without power to dissolve the National Assembly which could only be dissolved on the advice of the Prime Minister. In case he failed to act on the advice, the National Assembly would automatically stand dissolved on the expiration of forty-eight hours from such advice.[39]

(b) The procedure for a vote of no-confidence against the Prime Minister was made difficult and cumbersome. A resolution for a vote of no-confidence could not be moved in the National Assembly unless, in that very resolution, the name of another member of the assembly was put forward as the successor. If the resolution was by a majority of the total membership of the assembly, then the President had to call upon the person named in the resolution as successor to assume office as Prime Minister. However, for the first ten years, a provision was made in order to prevent floor crossing to the effect that the vote of a member, elected to the National Assembly as candidate or nominee of a political party, in favour of the resolution would be disregarded if the majority of the members of that political party in the National Assembly had cast its votes against such a resolution.[40] However, on the failure of such a resolution, no further resolution for a vote of no-confidence could be moved in the National Assembly for a period of six months.

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The President and the Cabinet

As discussed above, the President was reduced to merely a figurehead under the new Constitution. The executive authority of the federation was to be exercised in the name of the President by the federal government consisting of the Prime Minister and the federal ministers.[41] The qualifications of being elected as President were that he was required to be a Muslim of not less than forty-five years of age and qualified to be elected as a member of the National Assembly.[42] The President was to be elected by an electoral college comprising members of the parliament in joint sitting in accordance with provisions of the second schedule.[43] His term of office was five years and no one could hold the office for more than two consecutive terms.[44] The President could resign or might, on charges of violating the Constitution or gross misconduct or on the ground of physical or mental incapacity, be removed by the parliament in a joint sitting by a two-thirds majority of the total membership of the parliament.[45] The President was required to act on and in accordance with the advice of the Prime Minister which was binding on him.[46] However, the Prime Minister was supposed to keep the President informed on matters of internal and foreign policy and on all legislative proposals that the federal government intended to bring before the parliament.[47]

The Prime Minister and the federal ministers were collectively responsible to the National Assembly.[48] Federal ministers and ministers of state were to be taken from the parliament and were appointed by the Prime Minister. No more than one-fourth of such federal ministers and ministers of state could be taken from the upper House, the Senate.[49] It is noticeable that in the new Constitution, the word 'Cabinet' was carefully avoided. In its place, expressions like 'federal government' or 'the Prime Minister and the federal ministers' were used. Theoretically, the parliamentary system postulates Cabinet and the joint responsibility of the Cabinet. The Prime Minister is part and parcel of the Cabinet and not separate or different from it. He is regarded as first amongst equal members of the Cabinet. But in the new Constitution, the Prime Minister's position, powers, and responsibilities were separately and expressly described. He was clearly the boss of the federal ministers and Chief Executive of the federal government. Another departure from the peculiarities of the parliamentary system was the appointment of the ministers by the Prime Minister and not by the

President. Generally, in parliamentary democracies, ministers are appointed by the President though on the recommendation and nomination of the Prime Minister. These provisions, however, established the office of a super prime minister to befit the concept, personality, and the ambitions of Bhutto.

The President, subject to the advice of the Prime Minister, was entrusted with multifarious functions. Some of the key appointments, such as those of the Chief Justices and judges of the Supreme Court and the High Courts, the Governors of the provinces, the Attorney-General and the Chiefs of Staff of the Armed Forces, the Chief Election Commissioner, Auditor-General, and the Chairman and members of the Islamic Ideology Council were to be made by the President.[50] He could constitute the National Economic Council, the National Finance Commission, the Council of Common Interests, and the Islamic Ideology Commission for bringing the existing laws into conformity with the injunctions of Islam.[51] He also had the power to issue proclamations of political or financial emergency and could suspend a provincial government.[52] The President was empowered to raise and maintain the naval, military, and air forces of Pakistan.[53] He was also given powers to grant pardon and reprieve, and to remit, suspend or commute a sentence passed by any court, tribunal, or any other authority.[54] All these powers were exercisable on the advice of the Prime Minister.

Similarly, the President was given certain legislative functions to be exercised on the advice of the Prime Minister. He could summon, prorogue, and dissolve the Parliament on his advice.[55] The President could address the National Assembly and send messages to it.[56] When a Bill was passed by the National Assembly, he could not withhold his assent for more than seven days. After the expiry of seven days, the Bill would automatically become an Act of Parliament.[57] When the National Assembly was not in session, the President possessed the positive power of making laws by ordinances which were to be laid before the National Assembly and would cease to operate at the expiration of four months from its promulgation, or at such time as a resolution of disapproval was passed by either House of the Parliament.[58]

The Federal Government

Another basic feature of the new Constitution was the federal form of the government like the previous Constitutions. A clear distribution of powers between the national and provincial governments was provided and the principle of decentralization was accepted.

As for the distribution of legislative powers between the centre and the provinces, the powers were enumerated in two lists, federal and concurrent.[59] The extent of the federal laws was extended to the whole or any part of Pakistan, including the power to make laws having extra-territorial operations.[66] The power of a provincial legislature extended to the whole of that province or any part thereof.[61] The subjects given to the centre included foreign affairs comprising all matters which would bring Pakistan into relation with any foreign country, defence, currency, citizenship, foreign and inter-provincial trade and commerce, census, leisure, taxes and duties of excise and customs, copyright, trade mark, designs, maritime shipping and navigation, central bank, postal and all forms of telecommunications, minerals, oil and gas, and others. The federal legislative list consisted of two parts. Part I had fifty-nine items and Part II eight items.

The concurrent list comprised forty-seven items and was justified on the grounds that there were certain matters which could not be given exclusively either to the centre or to the provinces because, although such matters might normally be dealt with by the provinces, an occasion might arise when it would be desirable and necessary to deal with these matters on a national level. The list dealt with such matters as civil and criminal law, marriage and divorce, adoption, bankruptcy, arbitration, trusts, transfer of property and registration, preventive detention, arms and explosives, drugs, population planning, electricity, tourism, trade union, and other matters of common interest. With regard to subjects in the concurrent list, the precedence of federal legislation over the provincial legislation was guaranteed. A provincial law, to the extent of repugnancy with the federal law on the same subject, was to be void.[62]

The Constitution did not provide for a separate provincial legislative list and Provincial Assemblies were extended power to make laws on the residuary

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subjects, that is, matters not enumerated in either the federal or in the concurrent list.[63]

The Chief Justice of Pakistan was assigned an important role in the settlement of disputes between the federal government and a provincial government under a federal law conferring powers on provincial governments. He was to appoint an arbitrator to settle such a dispute[64] and was empowered to appoint an arbitrator to settle disputes between the federal government and a provincial government arising out of refusal by the federal government to entrust functions to a provincial government regarding broadcasting and telecasting or due to any conditions imposed by the federal government in this behalf.[65]

There was also provision for a Council of Common Interests which the President could set up in relation to matters enumerated in Part II of the Federal Legislative List or the Concurrent Legislative List or regarding exercise of supervision and control over related matters.[66] This was meant to be an important body for the provinces to air their grievances against the federation or other provinces and for redressal of such grievances. If the federal government or a provincial government was dissatisfied with the decision of the Council, it could refer the matter to parliament in joint sitting, whose decision would be final.[67]

There was provision in the Constitution whereby the federal legislature could make laws on any provincial matter. There were, however, two processes which would enable the parliament to legislate on a provincial subject. The first applied when a provincial legislature would authorize parliament to make laws in any matter within its competence. An Act passed by the parliament in exercise of this power, in so far as it would affect a province could, however, be repealed by the provincial legislature.[68] While legislation by the federal legislature under this provision was voluntary, the second process which would enable the federal government to intervene in provincial matters, was of far-reaching importance. While a proclamation of emergency was in operation, parliament was empowered to make laws for a province concerning any matter not enumerated in the federal or in the concurrent lists.[69]

The Federal Legislature (The Parliament)

Unlike the Constitutions of 1956 and 1962, the 1973 Constitution provided for a bicameral system. As discussed earlier, under the draft constitution made by the first Constituent Assembly, there was provision for a second chamber. The reasons for and the advantages of having a second chamber are, however, not confined to its utility as an instrument of representation of the units in a federation. From the standpoint of checks and balances, the second chamber is considered very useful and has a restraining as well as a sobering effect on the other chamber.

The 1973 Constitution is distinguishable from the earlier Constitutions particularly in two respects: the federation now had four provinces or federating units rather than the earlier two, and the principle of parity had ceased to be effective. Thus, in the chamber of the people (the National Assembly), where the representation is made on population basis, the small provinces like Balochistan would be meagrely represented. Therefore, the Upper House or House of States/Provinces would be meant for checks and balances. By allowing equal representation to all the provinces in the Upper House, regardless of their size and population, the smaller provinces were given a greater voice and larger role in the national affairs. The Upper House thus becomes a bulwark for the protection of smaller provinces against the brute majority commanded by the larger provinces in the Lower House. This situation is all the more pronounced in Pakistan (or what is left of Pakistan) where one province, the Punjab, holds an absolute majority of the population and the other three provinces put together are in minority. Thus, the unicameral system would necessarily result in the dominance of the Punjab. The bicameral system had, therefore, become a necessity and the Upper House, called the Senate, was introduced in the Constitution of 1973.

Members of the National Assembly were to be elected under an electoral system to be provided for by the parliament. The matters to be decided regarding elections included allocation of seats, delimitation of constituencies, preparation of electoral rolls, the conduct of elections and election petitions, matters relating to corrupt practices in the elections, and so on.[70] In the electoral laws that followed, the system of joint electorate was enforced.

A person was entitled to vote for the National Assembly (as well as a Provincial Assembly), if he was a citizen of Pakistan, not less than 18 years old, had not been declared by a court to be of unsound mind and his name had appeared in an electoral roll.[71]

A candidate for election to the National Assembly had to be at least 25 years of age and had to be qualified to vote. The Election Commission, on reference from the Speaker of the National Assembly, could decide questions of disqualification of a member and its decision was to be final.[72] No one was to be allowed to be a member of the National Assembly from more than one constituency, though a person could seek election from as many seats as he wished.[73] A member of the National Assembly could lose his seat if he remained absent for forty consecutive sitting days without leave of the House.[74] No one was allowed to be a member simultaneously of the National Assembly and of the Senate (of a federal house) and a Provincial Assembly.[75] The National Assembly would elect its Speaker and Deputy Speaker from amongst its members in its first meeting.[76] The term of the National Assembly was fixed at five years, on the expiration of which it would stand dissolved, if not dissolved earlier.

The Senate was to consist of sixty-three members, of whom fourteen were to be elected from each province by the members of the Provincial Assembly of that province in accordance with the system of proportional representation by means of a single transferable vote. Five members were to be elected by the National Assembly members from the Federally Administered Tribal Areas, and two were to be chosen from the Federal Capital in a manner prescribed by the President. The Senate was meant to be a permanent House not subject to dissolution. The term of office of its members was to be four years, half of them retiring every two years. However, the term of office of a person elected or chosen to fill a casual vacancy was to be the unexpired term of the member whose vacancy he had filled.[77] Like the National Assembly, the Senate also had to elect its Chairman and Deputy Chairman at its first session, from amongst its own members. However, the term of the office of Chairman or the Deputy Chairman was to be two years from the date of assumption of office.[78]

As discussed above, the 1973 Constitution introduced bicameral legislation for the first time in Pakistan. The federal legislature was given the name of Parliament and its two Houses were to be known as the National Assembly and the Senate.[79] The President was empowered to summon and prorogue the parliament.[80] There were to be at least two sessions of the National Assembly each year and not more than one hundred-and-twenty days were to intervene between any two sessions.[81] There was a similar provision for the Senate.[82] Every federal minister and minister of state and the Attorney-General had the right to speak and take part in the proceedings of either House of the Parliament but not the right to vote unless he were a member of that House.[83]

Either House of the Parliament was empowered to frame its own rules of procedure and the conduct of its business.[84] No member of the National Assembly could be made liable in any proceedings in court regarding anything said or any vote given by him in the assembly or its committees.[85] The privileges of the National Assembly, committees, the members thereof, and persons entitled to speak therein could be determined by an Act of Parliament.[86] In keeping with the principle of separation of powers, no court could enquire into the proceedings of Parliament.[87] Correspondingly, no discussion could take place in Parliament concerning the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties.[88]

The financial procedure provided by the Constitution was similar to that of the previous ones. No tax, for instance, could be levied for federal purposes except by or under the authority of an Act of Parliament.[89]

In the budget, the financial statement was divided into two parts; one showing the expenditure charged upon the consolidated fund, the expenditure which the National Assembly could discuss but not vote upon; the other part showing the sums required for the estimated expenditures of the various departments for the ensuing financial year. Expenditures charged upon the consolidated fund included; (a) remuneration and pension of the President, salaries of judges of the Supreme Court, members of the

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Federal Public Service Commission, the Speaker and the Deputy Speaker, the Attorney General, the Chief Election Commissioner, Chairman and Deputy Chairman of the Senate, and (b) the administrative expenses of the Supreme Court, the Federal Public Service Commission, the department of the Auditor-General, the office of the Election Commission, the Senate and the National Assembly; and (c) the debt charges binding on the federal government and sums required to satisfy any judgment, decree, or award against Pakistan by any court or tribunal, and any other sum declared by the Constitution or by Act of Parliament.[90]

The introduction of bicameral legislature at the centre had its effect on the legislative procedure. It has been discussed earlier that the competence of the parliament to make laws was extended to the federal and concurrent legislative lists. The federal legislative list, as stated before, was divided into two parts: Part I and Part II. The scheme of this division appears to be that the subjects enumerated in Part I were purely federal subjects and the subjects enumerated in Part II were subjects in which the provinces had special interest like the railways; minerals, oil and natural gas; Council of Common Interests, and others. The subjects enumerated in the concurrent list were, of course, of common interest and importance for the federation and the provinces. This being the case, it became imperative that the Senate, being a House of provinces, should be given greater role and voice in legislation on the subjects enumerated in Part II of the federal legislative list and the concurrent legislative list. Thus, different legislative procedures were given in the constitution for legislation on the subjects enumerated in Part I of the federal legislative list on the one hand and the subjects enumerated in Part II of the federal legislative list on the other.

A Bill relating to matters in Part I of the federal list could only originate in the National Assembly and if it was passed, it was transmitted to the Senate for consideration. If the Senate passed it without amendment or did not reject it or amend it within ninety days of transmission to it, then it would be deemed to have been passed. However, if the Senate rejected the Bill or passed it with amendment, then it would be presented to the National Assembly for reconsideration and if after such reconsideration, the National Assembly passed it again, with or without amendments proposed by the Senate, it would be deemed to have been passed and presented to the President for his assent.[91] A Bill relating to matters in Part II of the federal list or the concurrent list could originate in either House and if it was passed by one House, it would be transmitted to the other House. If the Bill was passed by the other House without amendment, it was presented to the President for his assent. In case the other House rejected it or passed it with amendment, the Bill, at the request of the House where it originated, had to be considered in a joint sitting of the two Houses of the Parliament which the President would summon.[92] If the Bill was passed by the votes of the majority of the total membership of the two Houses, then the same would be presented to the President for assent.

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The purpose of different legislative procedures for the passing of the Bill relating to Part II of the federal list and the concurrent list was to give greater weightage to the Senate which could exercise a temporary veto against a Bill passed by the National Assembly on any such matters. Nevertheless, the National Assembly could override such a veto in a joint sitting because it initially had 210 members compared to sixty-three in the Senate and a majority in the joint sitting meant 137 votes which the National Assembly alone could procure.

The Money Bills could only originate in the National Assembly and, if passed, they would be presented to the President for assent, without transmission to the Senate. If a question arose as to whether a Bill was a Money Bill or not, the decision of the Speaker of the National Assembly thereon should be final.[93]

Provincial Governments and Legislatures

The provincial legislatures and executives were small replicas of the institutions at the national level. The provincial legislature remained unicameral and directly elected by the people through universal adult franchise under the electoral laws common for the federal and provincial legislatures. The relationship between the provincial Governor, provincial Chief Minister and the Provincial Assembly closely resembled that between the President, the Prime Minister, and the Parliament. A Chief Minister was to be elected by the Provincial Assembly in the same

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manner in which the Prime Minister was to be elected by the National Assembly.[94] The Chief Minister and the provincial ministers were to be collectively responsible to the Provincial Assembly concerned which could only be dissolved by the Governor on the advice of the Chief Minister. The procedure of vote of no-confidence against a Chief Minister was the same as that for the Prime Minister, meaning thereby that a successor had to be named in a resolution for a vote of no-confidence.[95] The Governor did not have any power to veto any Bill passed by the Provincial Assembly and had to assent to it within seven days, otherwise it would be deemed to have been assented.[96] Governors could dissolve Provincial Assemblies but only on the advice of the Chief Ministers.[97] Various provisions relating to the Parliament or a House thereof were to apply to the Provincial Assemblies with appropriate adjustment of reference to the relevant authorities.[98] The Governor continued to be an appointee of the President and an agent of the central government which could exercise pressure in the provincial politics through the Governors.[99]

Distribution of Powers and Relations between the Centre and the Provinces

Administrative relations between the centre and the provinces were on the same lines as provided under the previous Constitutions. The federal system showed a marked tendency towards centralized control and authority. It was the constitutional duty of the federal government to protect each province against external aggression and internal disturbance and to ensure that the government of each province was carried on in accordance with the provisions of the Constitution.[100] A provincial government was obliged to exercise its executive authority in such a way as to ensure compliance with the Acts of Parliament and existing laws applying to that province.[101] The federal government was entitled to give direction to a province with regard to the duties of the provincial authority and was further entitled to give directions to a province in the following matters:[102]

(a) as to the construction and maintenance of communications declared to be of national or strategic importance;

(b) as to the manner in which the executive authority of the province was to be exercised for the purpose of preventing any grave menace to the peace and tranquility or economic life of Pakistan or any part thereof.

There was one important provision in the Constitution which would enable the federal government to delegate power to the provincial governments as its agents. The federal government might, with the consent of a provincial government, entrust either conditionally or unconditionally to that government, or to its officers, functions relating to any matter to which the executive authority of the federation extended.[103] Similarly, a provincial government, with the consent of the federal government, was also empowered to entrust, either conditionally or unconditionally, some of its executive functions to the federal government or to its officers.[104]

The new Constitution made no material changes regarding the distribution of financial resources between the centre and the provinces. The centre was given the power to levy custom duties, export duties, excise duties, corporation tax, taxes on income other than agricultural income, estate and succession duties regarding property other than agricultural land, tax on capital value of the assets exclusive of agricultural land, taxes on goods or passengers, and taxes on mineral, oil, and natural gas. The principal source of income for the provinces were land revenue and taxes on agricultural income, the capital value of agricultural land, taxes on land and buildings, taxes on mineral rights subject to the federal list, excise on alcohol and drugs, taxes on electricity, taxes on vehicles and advertisements, animals, boats, on professions and trades, and on luxuries.[105]

The Judiciary

In the new Constitution provisions relating to the judiciary were on the same lines as those in the previous Constitution. However, an effort was made to regulate and confine the powers and jurisdiction of the superior courts. It was clearly stated that no

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court should have any jurisdiction except that which was conferred or would be conferred in future, on it by the Constitution or by or under any law.[106] Thus, the courts could not assume unto themselves any jurisdiction or powers which were not expressly conferred on them by the Constitution or a law. This provision was clearly meant to whittle down the concept of inherent powers and jurisdiction of the superior courts.

The Supreme Court continued to be the apex court in the land. The law which it would lay down was binding on all courts in Pakistan.[107] All executive and judicial authorities throughout the country would act in aid of the Supreme Court and all directions, orders, decrees or writs issued by that Court were to be executed as if they were issued by the High Courts of the appropriate province.[108] The Supreme Court was entrusted with the task of interpreting the Constitution. It was specifically given the power to adjudicate in any dispute between any two or more 'governments', which term included the federal government and the provincial government.[109] The Supreme Court had appellate jurisdiction, both criminal as well as civil, over the judgments, decrees, final orders, and sentences passed by the High Courts. The Supreme Court could also hear an appeal from any judgment, decree, order, or sentence of a High Court on grant of leave.[110] The Supreme Court also had advisory jurisdiction on any question of law that the President might consider of public importance and refer it to the Supreme Court.[111] The Supreme Court was conferred with original jurisdiction to make orders on a question of public importance with reference to the enforcement of any fundamental rights.[112] The Constitution of 1973 for the first time provided for administrative courts and tribunals to be set up for the civil servants in relation to the matters of their terms and conditions including disciplinary matters. Appeals against the orders or judgments of such courts or tribunals would lie directly to the Supreme Court and that also on grant of leave to appeal on a substantial question of law of public importance.[113]

The writ jurisdiction of the superior courts which was conferred under the previous Constitutions was retained under the new Constitution. Each of the High Courts was conferred power throughout the territories regarding which it could exercise jurisdiction to issue to any person or authority, orders in the nature of *habeas corpus*, mandamus, prohibition, quo-warranto and *certiorari*. The High Courts were also empowered to issue orders for the enforcement of any of the fundamental rights guaranteed under the constitution.[114]

The Supreme Court was to consist of the Chief Justice and as many other judges as might be determined by an Act of Parliament or until so determined, as might be fixed by the President.[115] The Chief Justice was to be appointed by the President and other judges were to be appointed by the President in consultation with the Chief Justice.[116] The qualification for appointment as a judge of the Supreme Court was either five years standing as a judge of a High Court or fifteen years standing as an advocate of a High Court.[117] The retirement age of a Supreme Court judge was fixed at 65 years and he was disqualified from pleading or acting before any court or authority in Pakistan.[118]

A judge could only be removed by the President on the report of the Supreme Judicial Council to the effect that he was incapable of performing the duties of his office or had been guilty of misconduct. Such a report could only be made after due inquiry and affording opportunity to the judge concerned to defend himself.[119] The Supreme Judicial Council would consist of the Chief Justice of Pakistan, two next senior-most judges of the Supreme Court and the two most senior Chief Justices of the High Courts. There was also provision for the appointment of an Acting Chief Justice in the absence of the Chief Justice or when the office of the Chief Justice had become vacant.[120] There were also provisions for acting judges and adhoc judges for the Supreme Court.[121] The seat of the Supreme Court was to be at Islamabad but until such time it was so established, it was to be at a place appointed by the President.[122]

The Constitution provided for three High Courts, initially, one for the province of the Punjab, one for the province of NWFP and a common High Court for the provinces of Sindh and Balochistan.[123] Each High Court was to consist of a Chief Justice and such number of other judges that the President might determine.[124] The Chief Justice of a High Court was to be appointed by the President after consultation with the Chief Justice of Pakistan and the Governor of the province concerned. In case of appointment of other judges of a High Court, the President would appoint them in consultation with the aforesaid constitutional functionaries as well as the Chief Justice of that High Court.[125] The retirement age was fixed at 62 years.[126] The qualification for appointment as a judge of a High Court included ten years standing as an advocate of a High Court, ten years service as a member of the civil service of Pakistan including at least three years as a district judge, or holding of a judicial office in Pakistan for at least ten years.[127]

A judge of a High Court could not be removed from his office except by an order of the President made on the grounds of misbehaviour or infirmity of mind or body, if the Supreme Judicial Council, on reference being made to it by the President, reported that the judge ought to be removed on any of those grounds.[128] There was provision for the appointment of an Acting Chief Justice when the office of the Chief Justice became vacant or he was absent or unable to perform his duties.[129] The President had no option in the matter of appointment of Acting Chief Justice. He could only appoint the most senior of the other judges of the High Court to act as Chief Justice. However, transfer of judges from one High Court to another was made subject to the consent of the judge being transferred and subject to consultation with the Chief Justice of Pakistan and both the Chief Justices of the High Court of which he was a judge and to which he was being transferred.[130] The decision of a High Court on a question of law would be binding on all courts subordinate to it,[131] and which each High Court was empowered to supervise and control.[132]

Islamic Provisions

Islam was declared the state religion of Pakistan.[133] The Islamic way of life was to be promoted including steps like the organization of *zakat*, *auqaf*, and the mosques.[134] Strengthening of bonds with the Muslim world was another principle of policy under the Constitution.[135] The Head of the State, the President, was to be a Muslim.[136] The Prime Minister was also required to be a Muslim member of the National Assembly.[137]

An important Islamic provision declared that 'no law shall be enacted which is repugnant to the injunctions of Islam as laid down in the Holy Quran and the *sunnah*' and that existing laws 'shall be brought into conformity with injunctions of Islam as laid down in the Holy Quran and *sunnah*'.[138] The President would appoint within ninety days of the commencement of the Constitution a Council of Islamic Ideology to make recommendations to Parliament and the Provincial Assemblies for bringing the existing laws into conformity with the injunctions of Islam and as to the stages by which such measures should be brought into effect.[139] The Council was also to compile in a suitable form for the guidance of Parliament and the Provincial Assemblies such injunctions of Islam as could be given legislative effect. The Commission was to submit its final report within seven years of its appointment and might submit any interim report earlier. The report, whether interim or final, was to be laid before the Parliament and each Provincial Assembly within six months of its receipt and its legislatures, after considering the report, were to enact laws in respect thereof within a period of two years of the final report.[140]

Emergency Provisions

Under Article 232, if the President was satisfied that a grave emergency existed in which the security of Pakistan or any part thereof was threatened by war or external aggression or by internal disturbances beyond the power of the provincial government to control, he could issue a proclamation of emergency. The effects of a proclamation of emergency under Article 232 are as under:

(a) the parliament has the power to make laws for a province on those subjects which were not included in the federal or concurrent lists, that is, the Parliament would have power to legislate even in provincial matters.

(b) the federal executive authority has power to give direction to a province as to the manner in which the executive authority of the province would be exercised.

(c) the federal government might issue an order assuming unto itself, or directing the Governor of a province to assume on its behalf, all or any powers of the provincial government or any function of the provincial government except that of the Provincial Assembly. The federal government is also empowered to suspend in whole or in part the operation of any provision

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> of the Constitution relating to any body or authority in the Province.[141]

There was also provision for the proclamation of emergency due to the breakdown of constitutional machinery in a province. If the President, on receipt of a report from the Governor of a province, was satisfied that a situation had arisen in which the government of the province could not be carried on in accordance with the provisions of the Constitution he could, by proclamation, assume to himself, or direct the Governor to assume on his behalf, all or any of the functions or powers of the provincial government or any organ or body of the provincial government except the Provincial Assembly, and the Parliament might be authorized to exercise the powers of the Provincial Assembly. The President could also suspend the operation of any provisions of the Constitution relating to any body or authority in the province. The President, during a proclamation under this Article, was empowered to authorize expenditure from the provincial consolidated fund in anticipation of approval by the Parliament in the joint sitting.[142] The President, on the advice of the Prime Minister, has the discretion to make such a proclamation but, on the resolution of the two Houses, is under compulsion to make such a proclamation.

Another type of emergency for which the Constitution made provisions related to the financial stability or credit of Pakistan. If the President was satisfied that a situation had arisen whereby the financial stability or credit of Pakistan or any part thereof was threatened, he could, after consultation with the provincial Governors or with the Governor of the province concerned, issue a proclamation of financial emergency. During the period of financial emergency the federal government could direct a province to observe such principles of financial propriety and any other direction required for restoring financial stability and credit, including a direction to reduce the salaries and allowances of government servants or any other class of people serving in connection with the affairs of the federation.[143]

During the period of emergency, the operation of certain fundamental rights like freedom of movement, freedom of assembly, freedom of association, freedom of trade and business, freedom of speech, and property rights, could be suspended. The President could declare by order that the enforcement of fundamental rights during the period of emergency would remain suspended.[144] A proclamation of emergency could be varied or revoked by a subsequent proclamation.[145] The Parliament could enact laws of indemnity for those people in government service or otherwise regarding any act done in connection with the maintenance or restoration of order in any area in Pakistan.[146]

Other Features

Other features of the Constitution included the composition of the Election Commission of Pakistan for holding periodic elections to Parliament and the Provincial Assemblies,[147] determination of the conditions of employment of people in the service of Pakistan,[148] and the establishment and composition of the Public Service Commission.[149] The terms and conditions of service of civil servants were no longer protected under the Constitution but were made subject to ordinary law. Administrative courts and tribunals were to be set up under ordinary law for adjudication of questions arising from the terms and conditions of government servants, including disciplinary matters.[150]

The Constitution, or any of its provisions, could be amended by an Act of Parliament provided it originated and was passed by the votes of not less than two-thirds of the total number of members of the National Assembly and by the votes of a majority of the total membership of the Senate. However, no amendment of a constitutional provision affecting the limits of a province could be made unless such amendment had been approved by a resolution of its Provincial Assembly by not less than two-thirds of the total membership of that assembly.[151] However, the President can not withhold his assent to the amendment beyond seven days of the presentation of the Bill, after the expiry of which period, he would be deemed to have assented. If the Amendment Bill was not passed within ninety days of its receipt by the Senate, it would be deemed to have been rejected. An interesting aspect of this provision was that the Senate had complete veto power over the amendment of the Constitution. There was no provision for sending the Bill for consideration to the two Houses of the Parliament in the joint sitting. Thus, any two

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provinces could successfully thwart any effort to amend the Constitution to their dislike or disadvantage.

Another important provision was the validation of all laws including all proclamations, President's orders, martial law regulations, and martial law orders during the civilian martial law of Bhutto. All orders, proceedings taken, and acts done by any authority or person during the period of civilian martial law under the aforesaid laws were validated and those passing such orders, holding such proceedings, and performing such acts were indemnified.[152] All existing laws, subject to the Constitution, were continued in force so far as applicable and with necessary adaptations until altered, repealed, or amended by the appropriate legislature.[153]

Urdu was declared the national language of Pakistan. Steps were to be taken to bring it in use as the official language within fifteen years of the commencement of the Constitution and until such time, the English language might be used for official purposes.[154] The President, the Prime Minister, governors, chief ministers, federal ministers, ministers of state, and provincial ministers were granted immunity from court action for any act done in exercise of their powers or in performance of their functions.[155]

The Proclamation of Emergency on 23 November 1971 was deemed to be a Proclamation of Emergency under Article 232 and all laws, rules or orders made in pursuance of that proclamation would be deemed to have been validly made.[156]

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Notes

1. Constitution of Islamic Republic Pakistan, 1973, Article 90.
2. Ibid., Article 8.
3. Ibid., Article 10.
4. Ibid., Article 233.
5. Ibid., Article 25.
6. Ibid., Article 9.
7. Ibid., Article 12.
8. Ibid., Article 26.
9. Ibid., Article 11.
10. Ibid., Article 27.
11. Ibid., Article 23.
12. Ibid., Article 24.
13. Ibid., Articles 15, 16, 17, and 19.
14. Ibid., Article 20.
15. Ibid., Articles 21 and 22.
16. Ibid., Article 14.
17. Ibid., Article 13.
18. Ibid., Article 18.
19. Ibid., Article 27.
20. Ibid., Article 26.
21. Ibid., Article 28.
22. Ibid., Articles 29 and 30.
23. Ibid., Article 31.
24. Ibid., Article 38.
25. Ibid., Article 37.
26. Ibid., Article 33.
27. Ibid., Article 40.
28. Ibid., Article 36.
29. Ibid., Article 35.
30. Ibid., Article 34.
31. Ibid., Article 32.
32. Ibid., Article 38(f).
33. Ibid., Article 39.
34. Ibid., Article 175(3).
35. Ibid., Article 90(1).
36. Ibid., Article 91.
37. Ibid., Article 75.
38. Ibid., Article 48.
39. Ibid., Article 58.
40. Ibid., Article 96.
41. Ibid., Article 90.
42. Ibid., Article 41.
43. Ibid.
44. Ibid., Article 44.
45. Ibid., Article 47.
46. Ibid., Article 48.
47. Ibid., Article 46.
48. Ibid., Article 90.
49. Ibid., Article 92.
50. Ibid., Articles 100, 101, 168, 177, 193, 213, 228, and 243.
51. Ibid., Articles 153, 156, 160, and 238.
52. Ibid., Articles 232, 234, 235, and 236.
53. Ibid., Article 243.
54. Ibid., Article 45.
55. Ibid., Articles 54 and 58.

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56. Ibid., Article 56.
57. Ibid., Article 75.
58. Ibid., Article 89.
59. Ibid., Fourth Schedule.
60. Ibid., Article 141.
61. Ibid.
62. Ibid., Article 143.
63. Ibid., Article 142.
64. Ibid., Article 146.
65. Ibid., Article 159.
66. Ibid., Articles 153 and 154.
67. Ibid., Article 154.
68. Ibid., Article 144.
69. Ibid., Article 234.
70. Ibid., Article 222.
71. Ibid., Article 51.
72. Ibid., Article 63.
73. Ibid., Article 223.
74. Ibid., Article 64.
75. Ibid., Article 223.
76. Ibid., Article 53.
77. Ibid., Article 59.
78. Ibid., Article 60.
79. Ibid., Article 50.
80. Ibid., Article 54.
81. Ibid., Article 54.
82. Ibid., Article 61.
83. Ibid., Article 57.
84. Ibid., Article 67.
85. Ibid., Article 66.
86. Ibid.
87. Ibid., Article 69.
88. Ibid., Article 68.
89. Ibid., Article 77.
90. Ibid., Article 81.
91. Ibid., Article 70.
92. Ibid., Article 71.
93. Ibid., Article 73.
94. Ibid., Article 131.
95. Ibid., Article 136.
96. Ibid., Article 116.
97. Ibid., Article 112.
98. Ibid., Article 127.
99. Ibid., Article 145.
100. Ibid., Article 148.
101. Ibid.
102. Ibid., Article 149.
103. Ibid., Article 146.
104. Ibid., Article 147.
105. Ibid., Fourth Schedule.
106. Ibid., Article 175(2).
107. Ibid., Article 189.
108. Ibid., Articles 187 and 190.
109. Ibid., Article 184.
110. Ibid., Article 185.
111. Ibid., Article 186.
112. Ibid., Article 184(3).
113. Ibid., Article 212.
114. Ibid., Article 199.
115. Ibid., Article 176.
116. Ibid., Article 177.
117. Ibid.
118. Ibid., Articles 179 and 207.
119. Ibid., Article 209.
120. Ibid., Article 180.
121. Ibid., Articles 181 and 182.
122. Ibid., Article 183.
123. Ibid., Article 192.
124. Ibid.
125. Ibid., Article 193.
126. Ibid., Article 195.
127. Ibid., Article 193.
128. Ibid., Article 209.
129. Ibid., Article 196.
130. Ibid., Article 200.
131. Ibid., Article 201.
132. Ibid., Article 203.
133 Ibid., Article 2.
134 Ibid., Article 31.
135 Ibid., Article 40.
136. Ibid., Article 41.
137. Ibid., Article 91.
138. Ibid., Article 227.
139. Ibid., Articles 228 and 230.
140. Ibid.
141. Ibid., Article 232.
142. Ibid., Article 234.
143. Ibid., Article 235.
144. Ibid., Article 233.
145. Ibid., Article 236.
146. Ibid., Article 237.
147. Ibid., Articles 213, 215, 218, 219, and 220.
148. Ibid., Article 240.
149. Ibid., Article 242.
150. Ibid., Article 212.
151. Ibid., Articles 238 and 239.
152. Ibid., Article 269.
153. Ibid., Article 268.
154. Ibid., Article 251.
155. Ibid., Article 248.
156. Ibid., Article 280.

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Germany's political system

Bundesrat

The **German Bundesrat** is a legislative body that represents the sixteen *Länder* (federal states) of Germany at the national level. The Bundesrat meets at the former Prussian House of Lords in Berlin. Its second seat is located in the former West German capital of Bonn.

The Bundesrat participates in legislation, alongside the Bundestag, the directly elected representation of the people of Germany, with laws affecting state competences and all constitutional changes requiring the consent of the body. For its similar function, it is often described as an upper house of parliament along the lines of the US Senate, the Canadian Senate or the British House of Lords. The German constitution, however, does not define the Bundesrat and the Bundestag as the upper and lower houses of a bicameral legislature. Officially, it is generally referred to as a "constitutional body" alongside the Bundestag, the Federal President, the Federal Cabinet and the Federal Constitutional Court.

I - COMPOSITION

The Bundesrat is composed of members of government from the 16 Länder, which appoint and recall members.

This amounts to 69 members.

II - APPOINTMENT SYSTEM

Each Land government chooses among their members those who shall sit in the Bundesrat. In practice, the members of Länder's governments who do not sit in the Bundesrat are appointed as deputies, giving them the possibility to participate to the debates and to vote in the Bundesrat. To leave the government of a Land, or to be dismissed by it, leads to the inevitable loss of the position as member of the Bundesrat.

Each Land can delegate to the Bundesrat as many members as the number of votes it has. Each Land has at least 3 votes, and therefore 3 delegates; Länder with over two million inhabitants have 4 votes, those with over six million inhabitants have 5, and those with over seven million inhabitants have 6 votes.

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The duration of the term of office is the same as of the Land governments. From the constitutional point of view, the Bundesrat is a «permanent body», regularly renewed with the elections of regional parliaments. Because of this, these elections always have political consequences on the Federation.

III - SESSION CALENDAR

The Bundesrat helds one single session per year. The President of the Chamber convenes the Bundesrat. He must convene it at the request of at least two Länder representatives, or of the Federal Government. In practice, the agenda of plenary sessions is established in advance for the calendar year, according to the sitting weeks in the Bundestag. The Bundesrat convenes about thirteen times a year, with three-week intervals.

IV - RELATIONS WITH THE OTHER CHAMBER AND EXECUTIVE

When fulfilling their tasks, the Federal State and the Länder shall monitor each other; but they also have to take into account each one's interests, and exert a common action.

In this context of shared competences, the German federalism differs from all other federal systems because of the direct participation, through the Bundesrat, of Länder governments to the decisions of the Federal State. In the Bundesrat, this is in fact the will of the Land which shall be expressed, and not that of its members as individuals. As indicated in the Basic Law, each Land can express its vote only globally. Before any vote in the Bundesrat, the government of each Land must therefore reach an agreement on the way they think to express their votes. It has to be said that, in the Bundesrat, abstention does not mean a neutral position: any abstention equals a negative vote.

A - LEGISLATIVE POWER

1) Legislative initiative

It is attributed to the Bundesrat concurrently with the federal Government and Bundestag members.

Initiatives can originate from a Land or several Länder. If Länder wish the Bundesrat to introduce a government bill, they shall table a motion along the same lines. The Bundesrat gives its decision through a resolution. If the text that Länder wished is supported by an absolute majority, it becomes a Bundesrat bill, strictly speaking.

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Government bills are then sent to the Federal Government, and later to the Bundestag within 6 weeks.

2) Right of amendment

The Bundesrat takes a stand on texts submitted to it, but cannot modify them. The Bundesrat does not have, strictly speaking, the possibility to amend government or draft bills.

Nevertheless, in practice, when the Bundesrat comes to a decision on a text, either to give a previous opinion (for the examination of government draft bills in first reading: see below), or to approve it outright, to reject it outright, or else to call for a convening of the Mediation Committee, it supports its stand with proposals of modifications of the text. As the Bundesrat has a significant power of blocking in the legislative procedure, the Federal Government and the Bundestag are strongly encouraged to take into account the proposals of amendment expressed by the Bundesrat, if they want to see a text adopted.

3) Ordinary legislative procedure

The course of the legislative procedure may differ, depending on whether it is a text initiated by the Federal Government, the Bundestag or the Bundesrat. It also may differ depending on whether it is a so-called consent bill or objection bill.

a) Submission and transmission

Whenever **draft bills are issued by the Federal Government** (namely 2/3 of texts), the Bundesrat has the right to express itself on the drafts *before* the German Bundestag, during a «first reading». It may then give its stand within six weeks - three or nine in some specific cases. It frequently proposes amendments, additions or alternatives.

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Bundestag

The **Bundestag** is a constitutional and legislative body at the federal level in Germany. For its similar function, it is often described as a lower house of parliament along the lines of the US House of Representatives and the Canadian or the British House of Commons. The members of the Bundestag are elected for a term of four years by the German citizens on the principles of Universal Suffrage. However, the election day can be earlier if the Federal Chancellor (*Bundeskanzler*) loses a vote of no confidence and asks the Federal President to dissolve the Bundestag in order to hold new general elections.

Election

All candidates must be at least eighteen years old; there are no term limits. Half of the Members of the Bundestag are elected directly from 299 constituencies (first-past-the-post system), the other half are elected from the parties' Land lists in such a way as to achieve proportional representation for the total Bundestag (if possible).

Accordingly, each voter has two votes in the elections to the Bundestag. The first vote, allowing voters to elect their local representatives to the Bundestag, decides which candidates are sent to Parliament from the constituencies.

The second vote is cast for a party list; it determines the relative strengths of the parties represented in the Bundestag.

Powers and Functions

Together with the Bundesrat, the Bundestag is the legislative branch of the German political system.

Although most legislation is initiated by the executive branch, the Bundestag considers the legislative function its most important responsibility, concentrating much of its energy on assessing and amending the government's legislative program.

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The Bundestag members are the only federal officials directly elected by the public; the Bundestag in turn elects the Chancellor and, in addition, exercises oversight of the executive branch on issues of both substantive policy and routine administration. This check on executive power can be employed through binding legislation, public debates on government policy, investigations, and direct questioning of the chancellor or cabinet officials. For example, the Bundestag can conduct a question hour *(Fragestunde)*, in which a government representative responds to a previously submitted written question from a member. Members can ask related questions during the question hour. The questions can concern anything from a major policy issue to a specific constituent's problem.

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German President

The **President of Germany**, officially the **President of the Federal Republic of Germany** is the head of state of Germany.

Germany has a parliamentary system of government in which the Federal Chancellor is the nation's leading political figure and *de facto* chief executive. However, the President has a role which, while not an executive post, is more than ceremonial. Presidents have extensive discretion regarding the way they exercise their official duties.The Federal President gives direction to general political and societal debates and has some important "reserve powers" in case of political instability. The Federal President represents the Federal Republic of Germany in matters of international law, concludes treaties with foreign states on its behalf and accredits diplomats. Furthermore, all federal laws must be signed by the President before they can come into effect; however, he or she can only veto a law that he/she believes to violate the constitution.

The Federal President, by his or her actions and public appearances, represents the state itself, its existence, its legitimacy, and unity. The President's office involves an integrative role and the control function of upholding the law and the constitution. It is a matter of political tradition – not legal restrictions – that the Federal President generally does not comment routinely on issues in the news, particularly when there is some controversy among the political parties.[5] This distance from day-to-day politics and daily governmental issues allows the Federal President to be a

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source of clarification, to influence public debate, to voice criticism, offer suggestions and make proposals. In order to exercise this power, he/she traditionally acts above party politics

The federal President of Germany is the German head of state. On paper that makes him the most powerful political figure in Germany. His main responsibilities and actions are, however, mostly representative and ceremonial.

The President of Germany is not directly involved in making laws or political decisions which stir the country in one direction or the other. His role in German politics is rather that of a *watcher* or *public conscience*.

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Powers and functions

State visits and foreign representation: As first ambassador the President of Germany travels to a lot of different countries to establish and strengthen bi- or multinational relations. These relations are mainly symbolic, social and cultural, because he cannot independently sign treaties for Germany. President Horst Köhler for example was known for his commitment for developing countries in Africa while in office between 2004 and 2010.

Signing and verifying laws

All laws that are passed in parliament must be signed by the President of Germany to become effective. Only in a select few cases the president decided not to wave them through. When he did, the reason was either that he thought the law would break German Basic Law or because certain formalities had not been met.

Appointment and dismissal of the government

After elections the President of Germany suggests the Chancellor and appoints the various other members of the government. He also appoints and dismisses federal judges, high-ranking military personnel and other officials. He may also dissolute the parliament if no stable government can be formed or a vote of confidence is defeated.

Election of the President

To become a presidential candidate a few conditions must be met: The President of Germany must be a German citizen, at least 40 years old, and not be employed by or own any business. He cannot be part of the elected government. The President of Germany is elected in a Federal Convention (Bundesversammlung).

The Federal Convention consists of the members of the parliament and an equal amount of delegates elected from the different federal states. These delegates can be either politicians, but more often as not they are notable personalities and celebrities from all over the country. Because the President of Germany is elected secretly, the delegates are not bound to vote for the candidate their particular party favors.

German Chancellor and Cabinet.

The **Chancellor of Germany** is the head of government of Germany. In German politics, the *Chancellor* is equivalent to that of a prime minister in many other countries.The federal government consists of the chancellor and his or her cabinet ministers. As explained above, the Basic Law invests the chancellor with central executive authority. For that reason, some observers refer to the German political system as a "chancellor democracy." The chancellor's authority emanates from the provisions of the Basic Law and from his or her status as leader of the party or coalition of parties holding a majority of seats in the Bundestag. Every four years, after national elections and the seating of the newly elected Bundestag members, the federal president nominates a chancellor candidate to that parliamentary body; the chancellor is elected by majority vote in the Bundestag.

The Basic Law limits parliament's control over the chancellor and the cabinet. Unlike most parliamentary legislatures, the Bundestag cannot remove the chancellor simply with a vote of no-confidence. In the Weimar Republic, this procedure was abused by parties of both political extremes in order to oppose chancellors and undermine the democratic process. As a consequence, the Basic Law allows only for a "constructive vote of no-confidence." That is, the Bundestag can remove a chancellor only when it simultaneously agrees on a successor. This legislative mechanism ensures both an orderly transfer of power and an initial parliamentary majority in

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support of the new chancellor. The constructive no-confidence vote makes it harder to remove a chancellor because opponents of the chancellor not only must disagree with his or her governing but also must agree on a replacement.

Article 65 of the Basic Law sets forth three principles that define how the executive branch functions. First, the "chancellor principle" makes the chancellor responsible for all government policies. Any formal policy guidelines issued by the chancellor are legally binding directives that cabinet ministers must implement. Cabinet ministers are expected to introduce specific policies at the ministerial level that reflect the chancellor's broader guidelines. Second, the "principle of ministerial autonomy" entrusts each minister with the freedom to supervise departmental operations and prepare legislative proposals without cabinet interference so long as the minister's policies are consistent with the chancellor's larger guidelines. Third, the "cabinet principle" calls for disagreements between federal ministers over jurisdictional or budgetary matters to be settled by the cabinet.

The chancellor determines the composition of the cabinet. The federal president formally appoints and dismisses cabinet ministers, at the recommendation of the chancellor; no Bundestag approval is needed. According to the Basic Law, the chancellor may set the number of cabinet ministers and dictate their specific duties. Chancellor Ludwig Erhard had the largest cabinet, with twenty-two ministers, in the mid-1960s. Kohl presided over seventeen ministers at the start of his fourth term in 1994.

The power of the smaller coalition partners, the FDP and the CSU, was evident from the distribution of cabinet posts in Kohl's government in 1995. The FDP held three ministries–the Ministry of Foreign Affairs, Ministry of Justice, and Ministry for Economics. CSU members led four ministries–the Ministry of Finance, Ministry for Health, Ministry for Post and Telecommunications, and Ministry for Economic Cooperation.

The staff of a cabinet minister is managed by at least two state secretaries, both of whom are career civil servants responsible for the ministry's administration, and a parliamentary state secretary, who is generally a member of the Bundestag and represents the ministry there and in other political forums. Typically, state secretaries remain in the ministry beyond the tenure of any one government, in contrast to the parliamentary state secretary, who is a political appointee and is viewed as a junior member of the government whose term ends with the minister's. Under these top officials, the ministries are organized functionally in accordance with each one's specific responsibilities. Career civil servants constitute virtually the entire staff of the ministries.

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Turkish Political System

Turkish grand national assembly

Legislative power is vested in the unicameral Grand National Assembly, consisting of 550 deputies elected every 5 years. Under the 1961 constitution, the Grand National Assembly was a bicameral parliament with over 600 members. The 1982 system represents an effort to avoid the imbalances and the challenges to leadership that occurred under the larger, two-house legislature. And the number of deputies was dropped to 450 which later in 1998 became 550.

The legislative term has been lengthened by one year under the new Constitution in an effort to reduce the preoccupation with campaigning that had contributed to Turkey's political fragmentation in the past. For the same reason, by-elections to fill vacant seats are to be held only once between general elections unless the number of vacancies reaches 5 percent of the total assembly membership. General elections may be held earlier than scheduled if a majority of deputies so decides or if a prolonged parliamentary deadlock occurs.

The Grand National Assembly is to convene on the first day of September and may not recess for more than three months a year. During an adjournment, the president may summon the assembly for an extraordinary session, either on his own initiative or at the written request of one-fifth of the members. The assembly has the power to enact, amend, and repeal laws and can pass legislation over the veto of the president. It also supervises the Council of Ministers and authorizes it to issue governmental decrees. It debates and approves the budget and makes decisions regarding the printing of currency. In addition, the assembly approves the ratification of international treaties and has the power to authorize a declaration of war. Although the Constitution provides for legislative controls over the executive in the form of written questions, investigations, and interpellations, whereby the Council of Ministers can be voted out of office, there are also procedures under which the parliament may delegate its lawmaking powers to the Council of Ministers.

Every Turkish citizen over the age of twenty-five is eligible to be a deputy, provided that he/she has completed primary education and has not been convicted of serious crime or been involved in "ideological and anarchistic activities". Male candidates are required to have performed the compulsory military service. Members of higher judicial and educational institutions as well as civil servants and members of the armed forces must resign from office before standing for election.

According to the Constitution, deputies represent the whole nation, not merely their own constituencies. A member of the Turkish Grand National Assembly wields more patronage and influence than do members of most other Western parliaments and is expected to intervene in the bureaucracy more actively and frequently.

Legislators are granted parliamentary immunities, such as freedom of speech and, with some qualifications, freedom from arrest. They can be deprived of their membership in the assembly by the decision of an absolute majority of its members. A deputy who resigns from his party may not be nominated as a candidate in the following elections by any party in existence at the time of his resignation.

Members of parliament have traditionally been a fairly young, educationally elite group; at least two-thirds of the deputies of every Grand National Assembly have been university educated. Whereas this has continued to be the case under the new constitutional system, there has been a shift in occupational representation away from a predominance of officials. A large portion of the deputies since 1983 have been lawyers, engineers, businessmen, and economists.

Kamal principles

Republicanism means government through the will of the people, parliamentary elections, rotation of office, and popular sovereignty. The beginning of the Republic in Turkey is usually dated at April 23, 1920, with the opening of the Grand National Assembly in Ankara. Although it would be decades before the full realization of a Western-style parliamentary republic would be achieved (multiparty democracy, constitutional supremacy; individual rights to complete freedom of conscience, speech, press, religious liberty and due process of law), Mustafa Kemal began the arduous task of transforming the old Ottoman Empire into a modern, liberal Western society with the permissions of the national assembly.

Nationalism means an independent, powerful country free from foreign domination. Unlike the multicultural Ottoman Empire, the Turkish nation is distinct in culture, but it pledged to tolerate diversity in culture and religion and respect individual freedom and conscience.

Nationalism defines the "Turkish People" as "those who protect and promote the moral, spiritual, cultural and humanistic values of the Turkish Nation."

"Turkish Nation" meant People who live under the borders of the Republic of Turkey, always love and seek to exalt their country and family, who know and exercises their duties and responsibilities towards the democratic, secular and social state for common benefits and interests of the residents of the country.

Mustafa Kemal Atatürk defines the Turkish Nation by saying "the folk which constitutes the Republic of Turkey is called the Turkish Nation."

Nationalism is closely coupled with Secularism (Laicite) which provides individuals with freedom of consciousness which establishes setting up an environment in which common goals can be developed and reached without being manipulated or restricted by any particular belief system.

Populism means democratic control by the people of internal politics through the rule of law. Self-government, popularly elected leaders, and regular elections constitute "populism" in the Turkish sense. This revolution aims to ensure o the best interest of the general public without limiting opportunities, individual rights, freedom, development and progress. It is closely linked with the Statism which aims to support individuals, groups and society in attempting their goals. The Statism and Populism are in equilibrium while each complements the other.

Statism refers to the mixture of private property/free enterprise economics with government control of major industries and regulation of the overall economy for the good of the whole country. Today, this "mixed economy" of capitalism and socialism dominates in modern, Western societies.

Secularism means the formal, legal separation of religion from politics, the end of the domination of the state by Islamic officials, and the individual freedom of conscience to believe, worship, and communicate religious truths as the individual understands them. Such liberty of religion implies the freedom to learn of all faiths, to seek God's guidance in knowing His Truth, and sharing it with others without fear of persecution or injury. The premise of this is that such individual searching after God's Truth and voluntary faith in God is pleasing to God, while forced adherence to a certain religion is not really pleasing to God.
So, the "secularization" means not against religious truth; but meant separating it from scientific and purely political matters. A religious moral people are necessary to an ethical, healthy republic, but faith is best inculcated at home and church rather than school.

Revolutionism means a continuous progressive change in any subject that are interests of Turkish society to conform with modern civilization, better human conditions and progress.
In this respect and understanding of revolution, Mustafa Kemal' s revolutions included but not limited to the following.

- establishing Citizenship consciousness
- transiting individuals from the slave of Sultan to independent individuals
- establishing freedom of consciousness and beliefs
- establishing freedom of speech and views
- granting equal legal rights to women;
- adopting a better working justice code;
- public education; using the Latin (rather than Arabic) alphabet;
- abolition of titles;
- adoption of Western time standards, calendar, and measures;
- abolition of rural tithes and traditional religious dress codes

Together, these revolutions radically transformed society in Turkey from an impoverished, isolated society to a relatively prosperous, democratic culture integrated into the modem, civilized, competitive, and free society wh8ich did not exist for the society before.

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However, Atatürk's political principles did not take effect immediately. They took a few generations to become embedded in the Turkish culture and psyche. They required "the talents of a reformer, a builder, a statesman, a leader" and Kemal Atatürk became all those things. He led the early, fledging Turkish Republic with a dedicated mind and determined hand.

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Role of military in Turkish politics

The role of the military in Turkish politics is the central question in the country's European Union membership process, since one of the crucial political factors stipulated by Brussels for obtaining full membership has been the democratic control of the military.

In order to achieve this ambitious aim, a dramatic reform process for democratic control has been launched. Under the AKP government, the power of the army in Turkish politics has dramatically diminished since 2002. Over the past two years, a number of officers and retired generals have been arrested in connection with the so-called "Ergenekon" case. Prosecutors accuse the network of planning to create chaos through a serious of bloody provocations, thus justifying a coup against the AKP government.

On the other hand, the Turkish general staff denied these accusations. As a result, there is an ongoing power struggle between Erdoğan's government and the Turkish military. So, in spite of this move by the government, there are serious difficulties in terms of establishing full civilian control over the military due to the strong position of the Turkish military in politics.

The Military and the State: the Ottoman Legacy

The legacy of military involvement in Turkish politics goes back to Ottoman times. The military played a key role in the history of the Ottoman Empire.

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since it could extend its territory by having a strong army. Toward the end of the empire, the state's modernization process was driven by military concerns.

The evolution of the army commenced through the establishment of institutions developed according to Western models, in which a new generation of reformist officers appeared. These officers began to see themselves as the vanguard of enlightenment. They pioneered the political modernization by leading the 1876 revolution and the Young Turk revolution of 1908. The legacy of military intervention appeared through these revolutions in which the armed forces played a leading role. These interventions brought about new reforms, which changed significant aspects of the political and social system.

The Role of the Military after the Creation of the Kemalist Republic

After the First World War, Mustafa Kemal (Ataturk) emerged as the country's political and military leader. He and other generals transformed the Ottoman Empire into a modern nation-state. In other words, Turkey's modernization process was again led by the military.

In the first year of the Republic, Mustafa Kemal sought to exclude the army from open involvement in party politics. In order to achieve this, a law was passed in 1923 which obliged serving officers who were elected to parliament to resign from the army. The aim of Mustafa Kemal was not only to prevent the military from exercising direct political influence, but also to protect the military from the everyday struggles of the political arena. However, Ataturk's removal of the army from politics was never quite complete, because he also saw the role of army as the guardian of the secular republic.

As a result, the army has since then felt a responsibility for the protection of the principles of the Kemalist republic. When it has felt that the republic and its principles to be threatened, the army has in the past taken responsibility for its protection. This principle was written into the Turkish Armed Services Internal Service Code. It states that "the duty of the armed forces is to

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protect and safeguard Turkish territory and the Turkish Republic as stipulated by the Constitution." Three interventions have been justified on this legal basis.

Thus, the current position of the military in Turkish politics is the product of a long-term process. The army sees itself as a "guardian" of the Republic and its principles. These characteristics of the military, however, have also caused a dilemma for Turkey-EU relations, as the EU's principles are completely opposed to military involvement in politics. The reasons why the European Union has been pushing Turkey to reform its civil-military relations are specified in the Copenhagen criteria, which comprise of three distinct criteria: political, economic, and those related to the obligations of the EU membership.

The Changing Role of the Military following EU Reforms

The political criteria require the implementation of institutional stability, complete freedom of expression, the entrenchment of human rights, and respect and protection of minorities. Although the democratizing of civil-military relations are not directly mentioned in the.Copenhagen criteria, the military as an institution should be subordinate to the political criteria. Following the acceptance of Turkey as a candidate country in 1999, Turkey agreed to the fulfilment of the Copenhagen political criteria in order to start accession negotiations. As a result, the democratizing of civil-military relations has become one of the most important issues in the overall reform process, since one of the most important conditions of the political criteria for Turkey's full membership is the democratic control of the military.

After the acceptance of Turkey as a candidate country, the main criticism of the accession partnership document, annual reports and progress reports on Turkey concerned the perceived lack of democratic control over the country's military. The main criticisms of these documents were generally in regards to the institutional aspect of democratic control. In this respect, the status of the Chief of the General Staff under the prime minister, the role of the National Security Council in Turkish political life and the lack of an

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effective civilian control over the military budget constitute main reform areas.

All of these required reforms have been outlined in official EU documents, namely the Accession Partnership Documents and Regular Reports. According to these reports, Turkey's reform process in civil-military relations can be divided into four parts: the transformation of the role and composition of the National Security Council; the transparency of the defense budget; the removal of the military representatives from the civilian boards; and an amendment concerning military courts.

Reforms Undertaken: From the National Security Council to Military Courts

Firstly, the position of the National Security Council in politics was one of the main impediments in relations with the EU. The NSC was established after the 1960 Military Intervention in order to legitimize the place of the army in politics. Its power was then enlarged after the 1980 Military Intervention. The new council of the NSC is composed of the president of the republic, the prime minister, the chief of the general staff, the ministers of foreign affairs, internal affairs, and defense, as well as the top military commanders. Thus, the military was able to make itself politically more active and effective.

However, in the process of moving towards EU membership, the power of the NSC has been restricted. With the modification of Article 118 of the constitution, the role of the NSC was diminished. According to the 1982 Constitution, the NSC was responsible for the drafting of national security and foreign policy. With this amendment, it became solely an advisory body. Furthermore, the composition of the NSC has been altered, with an increase in the number of its civilian members. Moreover, the post of The Court of Auditors has been authorized to audit accounts and transactions of all types of organizations, including state properties owned by the armed forces. With the introduction of these reforms, Turkey's elective representatives became more effective in making the armed forces more accountable.

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The removal of military representatives from the civilian boards is the third area of the reform process. As part of the 6th Harmonization Package of 19 July 2003, the NSC representative on the supervisory Board of Cinema, Video and Music was removed; similarly, military representatives on the Higher Education Board and the Higher Broadcasting Board were also withdrawn. As a result, progress on EU reforms have prepared the way for a diminished military influence on the policies of educational, arts and broadcasting institutions.

The final area of the reform process concerns the amendments of military courts. According to the Accession Partnership Documents, the European Commission's main criticism was of the excessive power of State Security Courts that deal with political crime. The Commission also had doubts about the impartiality of judges, since one in three State Security Court judges were military judges. This was the only example in Europe in which civilians can be tried, at least in part, by military judges. For these reasons, the legal basis for the existence of State Security Courts has been removed. Moreover, the trial of civilians in military courts was abolished as part of the 7th Harmonization Package. Eventually, State Security Courts were totally abolished in 2004.

Therefore, in regards to EU demands, Turkey has made reforms in all the area mentioned. The important question, then, becomes the extent to which these reforms have been successful in restoring full civilian control over the military. Through the EU membership process, civil-military relations have become more democratized. In other words, the autonomy of the military in Turkey has been diminished by means of EU reforms. As a result, the NSC is no more an executive body, and has only an advisory function; the transparency of the defense expenditures has been enhanced; and the function of the military court has been limited.

However, there are still perceived problems regarding the position of the military. Firstly, military representatives continue to make their views known on a variety of topics, through speeches, their influence on the media, and through formal declarations. Most of the time, statements by the military are

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perceived as warnings to the civilian government. During the presidential election in 2007, the army was able to influence politics. As the generals objected to Abdullah Gül, the AKP candidate, they placed a message on the defense ministry's website, threatening intervention. This "e-coup" caused political chaos in Turkey, which resulted in a new general election.

The second problem is that the chief of the Turkish general staff is still directly responsible to the prime minister, contrary to EU practices. These unchanged positions of the military indicate that the political influence of the military remains, and that civil power in Turkey is still far from exercising full control over the military.

There is no doubt that EU candidacy has contributed to the democratization of civil-military relations in Turkey. According to the last EU Progress Report on Turkey's accession, progress has been made regarding civilian control of the army. The military court's competencies have now been limited through the constitutional package. Moreover, the decisions of the Supreme Military Council are now open to judicial review.

However, there are certain limits to its impact because of the legacy of the Ottoman Empire and the Kemalist Republic, and this will probably remain the case in the near future. Full civilian control over the military can only be maintained with the full implementation of recent reforms, which, as the Regular Reports on Turkey consistently indicate, are crucial to the democratization process.

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President of Turkey

The **President of Turkey** is the head of state of the Republic of Turkey. The Presidency is largely a ceremonial office but has some important functions. In this capacity, the President represents the Republic of Turkey, and the unity of the Turkish nation, as well as ensuring the implementation of the Constitution of Turkey and the organized and harmonious functioning of the organs of state. The duties and powers of the President have be stated in Articles 101, 102, 103, 104, 105 and 106 of the Constitution of the Republic of Turkey.

A. Qualifications and Impartiality

The President shall be elected by the people, from among the members of the Turkish Grand National Assembly who are over forty years old and who have completed their higher education or from among Turkish citizens who fulfill these requirements and who are eligible to be members of parliament.

The term of office of the President is five years. A person can be elected President for a maximum of two terms.

The nomination of a candidate for the Presidency from within the members of the Turkish Grand National Assembly or from outside the Turkish Grand National Assembly shall be possible with a written proposal by twenty members of parliament. Furthermore, when the total of the valid votes is calculated together in the latest member of parliament general elections, the political parties who surpassed ten-percent can show a joint candidate.

The President-elect, if a member of a political party, shall sever his/her relations with his/her party and his/her status as a member of the Turkish Grand National Assembly shall cease.

D. Duties and Powers (Article 104)

The President is the head of the State. In this capacity, he/she shall represent the Republic of Turkey and the unity of the Turkish Nation;

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he/she shall ensure the implementation of the Constitution, and the regular and harmonious functioning of the organs of State.

To this end, the duties he/she shall perform, and the powers he/she shall exercise, in accordance with the conditions stipulated in the relevant articles of the Constitution are as follows:

a) Those related to legislation:

- To deliver, if he/she deems necessary, the opening address of the Turkish Grand National Assembly on the first day of the legislative year,
- To summon the Turkish Grand National Assembly to meet, when necessary,
- To promulgate laws,
- To return laws to the Turkish Grand National Assembly to be reconsidered,
- To submit to referendum, if he/she deems necessary, legislation regarding amendments to the Constitution,
- To appeal to the Constitutional Court for an annulment in part or entirety of certain provisions of laws having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly on the grounds that they are unconstitutional in form or in content, and
- To call new elections for the Turkish Grand National Assembly.

b) Those related to the executive function:

- To appoint the Prime Minister and to accept his resignation,
- To appoint and dismiss Ministers on the proposal of the Prime Minister,
- To preside over the Council of Ministers or to call the Council of Ministers to meet under his/her chairmanship whenever he/she deems it necessary,
- To accredit representatives of the Turkish State to foreign states and to receive the representatives of foreign states to the Republic of Turkey,
- To ratify and promulgate international treaties,
- To represent the Commander-in-Chief of the Turkish Armed Forces on behalf of the Turkish Grand National Assembly,
- To decide on the use of the Turkish Armed Forces,

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- To appoint the Chief of General Staff,
- To call the National Security Council to meet,
- To preside over the National Security Council,
- To proclaim martial law or state of emergency, and to issue decrees having the force of law, in accordance with the decisions of the Council of Ministers convened under his/her chairmanship,
- To sign decrees,
- To remit, on grounds of chronic illness, disability or old age, all or part of the sentences imposed on certain individuals,
- To appoint the members and Chairman of the State Supervisory Council,
- To instruct the State Supervisory Council to carry out enquiries, investigations and inspections,
- To appoint the members of the Higher Education Council, and
- To appoint rectors of universities,

c) Those related to the judiciary:

To appoint the members of the Constitutional Court, one-fourth of the members of the Council of State, the Chief Public Prosecutor and the Deputy Chief Public Prosecutor of the High Court of Appeals, the members of the Military High Court of Appeals, the members of the Supreme Military Administrative Court and the members of the Supreme Council of Judges and Public Prosecutors.

The President shall also exercise powers of election and appointment and perform the other duties conferred on him by the Constitution and laws.

E. Accountability and Non-accountability (Article 105)

All Presidential decrees except those which the President is empowered to enact by him/herself without the signatures of the Prime Minister and the minister concerned, in accordance with the provisions of the Constitution and other laws, shall be signed by the Prime Minister, and the ministers concerned. The Prime Minister and the ministers shall be accountable for these decrees. No appeal shall be made to any legal authority, including the Constitutional Court, against the decisions and orders signed by the President on his/her own initiative.

The President may be impeached for high treason on the proposal of at least one-third of the total number of members of the Turkish Grand

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National Assembly, and by the decision of at least three-quarters of the total number of members.

F. Deputation for the President (Article 106)

In the event of a temporary absence of the President on account of illness, travel abroad or similar circumstances, the Chairman of the Turkish Grand National Assembly shall serve as Acting President and exercise the powers of the President until the President resumes his/her functions, and in the event that the Presidency falls vacant as a result of death or resignation or for any other reason, until the election of a new President.

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Iran's Political system

PARLIAMENT

The Iranian Parliament is a unicameral legislative body whose 290 members are publicly elected every four years. It drafts legislation, ratifies international treaties, and approves the country's budget. In the parliamentary elections of 2000, reformist candidates won nearly three-quarters of the seats in Parliament; only 14 percent of the newly elected deputies were clerics. However, Parliament is still held in check by the Council of Guardians, the influential oversight body that examines all laws passed by Parliament to determine their compatibility with sharia, or Islamic law. At times, the council, half of whose members are appointed by the Supreme Leader, has struck down up to 40 percent of the laws passed by Parliament.
Parliamentary sessions are open to the public; its deliberations are broadcast and its minutes are published.
Each deputy represents a geographic constituency, and every person sixteen years of age and older from a given constituency votes for one representative. The Majlis cannot be dissolved: according to Article 63, "elections of each session should be held before the expiration of the previous session, so that the country may never remain without an assembly. A principal requirement for any members of parliament (MP) is

his/her deep belief in Islam. Another important qualification for candidacy is a history of participating in the 1978-79 Revolution.

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Iranian President

The **President of Iran** is the head of government of the Islamic Republic of Iran. The President is the highest elected official in Iran, although the President answers to the Supreme Leader of Iran, who functions as the country's head of state. Chapter IX of the Constitution of the Islamic Republic of Iran sets forth the qualifications for presidential candidates and procedures for election, as well as the President's powers and responsibilities as "functions of the executive". These include signing treaties and other agreements with foreign countries and international organizations; administering national planning, budget, and state employment affairs; and appointing ministers subject to the approval of Parliament.[2]

Unlike the executive in other countries, the President of Iran does not have full control over Iran's foreign policy, the armed forces, or nuclear policy, as these are ultimately under the control and are the responsibility of the Supreme Leader.[3]

The President of Iran is elected for a four-year term by the direct vote of the people and may not serve for more than two consecutive terms or more than 8 years.

Qualifications and election

The President of Iran is elected for a four-year term in a national election by universal adult suffrage for everyone of at least 18 years of age.[6] Candidates for the presidency must be approved by the Council of Guardians, a twelve-member body consisting of six clerics (selected by Iran's Supreme Leader) and six lawyers (proposed by the head of Iran's judicial system and voted in by the Parliament).[7] According to the Constitution of Iran candidates for the presidency must possess the following qualifications:

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- Iranian origin;
- Iranian nationality;
- administrative capacity and resourcefulness;
- a good past record;
- trustworthiness and piety; and
- convinced belief in the fundamental principles of the Islamic Republic of Iran and the official madhhab of the country.[8][9]

Within these guidelines the Council vetoes candidates who are deemed unacceptable. The approval process is considered to be a check on the president's power, and usually amounts to a small number of candidates being approved. In the 1997 election, for example, only four out of 238 presidential candidates were approved by the council. Western observers have routinely criticized the approvals process as a way for the Council and Supreme Leader to ensure that only conservative and like-minded Islamic fundamentalists can win office. However, the council rejects the criticism, citing approval of reformists in previous elections. The council rejects most of the candidates stating that they are not "a well-known political figure", a requirement by the current law.

The President must be elected with a simple majority of the popular vote. If no candidate receives a majority in the first round, a runoff election is held between the top two candidates.

Powers and responsibilities

- Leader of the executive branch of government and chairman of the cabinet
- The deputy commander-in-chief of the military of the Islamic Republic of Iran
- Declare a state of emergency suspending all laws or enacting a state of martial law
- Head (Presided) of the Supreme National Security Council
- Head (Presided) of the Supreme Council of the Cultural Revolution
- Appointment of First Vice Presidents
- Nomination of Cabinet members to the Parliament
- Sends and receives all foreign ambassadors
- Issue executive orders
- Issue medals in honor of service for the nation

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- Issue presidential pardons

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Supreme Leader of Iran

The **Supreme Leader of Iran** is the head of state and highest ranking political and religious authority in the Islamic Republic of Iran.

This post was established by the Constitution of the Islamic Republic of Iran in accordance with the concept of the Guardianship of the Islamic Jurist. According to the Constitution, the powers of government in the Islamic Republic of Iran are vested in the legislature, the judiciary, and the executive powers, functioning under the supervision of the **Absolute Guardianship and the Leadership of the Ummah**, that refers to the Supreme Leader. The title *"Supreme"* Leader is often used as a sign of respect; however, this terminology is not found in the Constitution, which simply referred to the "**Leader**".

The Supreme Leader is more powerful than the President of Iran and appoints the heads of many powerful posts in the military, the civil government, and the judiciary. Originally Iran's constitution stated that the Supreme Leader must be the highest ranking cleric and authority on religious laws in Usuli Twelver Shia Islam. However, in 1989, the constitution was amended to require simply Islamic "scholarship" of the leader, i.e., the leader could be a lower ranking cleric.

In its history, the Islamic Republic has had two Supreme Leaders: Ruhollah Khomeini, who held the position from 1979 until his death in 1989, and Ali Khamenei, who has held the position since Khomeini's death.

In theory, the Supreme Leader is elected and supervised by the Assembly of Experts. All candidates to the Assembly of Experts, the President and the Majlis (Parliament), are selected by the Guardian Council, whose members are selected by the Supreme Leader of Iran.[8] As such, the Assembly has never questioned the Supreme Leader.

His Power of Appointments

- (inaugurates) the President and may also together with a two third majority of the Parliament impeach him.
- the Chief Justice (head of the Judiciary Branch usually a member of the Council of Experts) for a term of 8 years,

- 6 of the 12 Members of the Guardian Council from among the members of the Council of Experts the other 6 are chosen by the Parliament.
- the head of the National Radio and Television Institution IRIB for a term of 8 years
- the Imams of the Friday Prayer of each Province Capital (with the advice of all the Marja') for a lifetime
- Armed Forces of the Islamic Republic of Iran
    - the Commander of the Armed Forces of the Islamic Republic of Iran
    - the Commander of the Islamic Republic of Iran Army
    - the Commander of the Islamic Republic of Iran Navy
    - the Commander of the Islamic Republic of Iran Air Force
    - the Commander of the Islamic Republic of Iran Air Defense Force
- Islamic Revolutionary Guard Corps (IRGC)
    - the Commander of the IRGC

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Functions and duties of the Supreme Leader

According to Article 110 of the Constitution, the Duties and Powers of the Supreme Leader are:

1. Delineation of the general policies of the Islamic Republic of Iran after consultation with the Nation's Expediency Discernment Council.
2. Supervision over the proper execution of the general policies of the systems.
3. Issuing decrees for national referendums.
4. Assuming supreme command of the armed forces.
5. Declaration of war and peace, and the mobilization of the armed forces.
6. Appointment, dismissal, and acceptance of resignation of:
    1. the fuqaha' on the Guardian Council.

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   2. the supreme judicial authority of the country.
   3. the head of the radio and television network of the Islamic Republic of Iran.
   4. the chief of the joint staff.
   5. the chief commander of the armed forces of the country
   6. the supreme commanders of the armed forces.
7. Resolving differences between the three wings of the armed forces and regulation of their relations.
8. Resolving the problems, which cannot be solved by conventional methods, through the Nation's Expediency Discernment Council.
9. Signing the decree formalizing the elections in Iran for the President of the Republic by the people.
10. Dismissal of the President of the Republic, with due regard for the interests of the country, after the Supreme Court holds him guilty of the violation of his constitutional duties, or after an impeachment vote of the Islamic Consultative Assembly (Parliament) testifying to his incompetence on the basis of Article 89 of the Constitution.
11. Pardoning or reducing the sentences of convicts, within the framework of Islamic criteria, on a recommendation (to that effect) from the head of the Judiciary. The Supreme Leader may delegate part of his duties and powers to another person.

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Assembly of Experts

The Assembly of Experts is a deliberative body of eighty eight (88) Mujtahids (Islamic theologians) that is charged with electing and removing the Supreme Leader of Iran and supervising his activities. Members of the assembly are elected from lists of candidates by direct public vote for eight-year terms. The number of members has ranged from 82 elected in 1982 to 88 elected in 2016. Current laws require the assembly to meet for at least two days every six months. All candidates to the Assembly of Experts, the President and the Majlis (Parliament), must be approved by the Guardian Council, which half of its members are selected by the Supreme Leader of

Iran. As such, the Assembly has never questioned the Supreme Leader.

According to the Iranian Constitution, the assembly is in charge of supervising, dismissing and electing the Supreme Leader. In the event of his death, resignation or dismissal, the Experts shall take steps within the shortest possible time to appoint a new Leader. "Whenever the Leader becomes incapable of fulfilling his constitutional duties, or loses one of the qualifications mentioned in the Constitution, or it becomes known that he did not possess some of the qualifications initially, he will be dismissed. The assembly has never dismissed a sitting Supreme Leader, and as all of their meetings and notes are strictly confidential, the assembly has never been known to challenge or otherwise publicly oversee any of the Supreme Leader's decisions.

To choose the Supreme Leader, the Experts are to review qualified candidates and consult among themselves. Constitutionally the criteria of qualification for the office of the Supreme Leader include "Islamic scholarship, justice, piety, right political and social perspicacity, prudence, courage, administrative facilities and adequate capability for leadership." In the event that they find one of the jurists better versed in Islamic regulations, in fiqh, or in political and social issues, or possessing more general popularity or special prominence than any of their members, they shall elect that person as Supreme Leader. Otherwise, in the absence of such a candidate, the Experts shall elect and declare one of their own as Supreme Leader.

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The Guardian Council

The **Guardian Council of the Constitution** is an appointed and constitutionally-mandated 12-member council that wields considerable power and influence in the Islamic Republic of Iran.

The Iranian constitution calls for the council to be composed of six Islamic faqihs (expert in Islamic Law), "conscious of the present needs and the issues of the day" to be selected by the Supreme Leader of Iran, and six jurists, "specializing in different areas of law, to be elected by the Majlis (the Iranian Parliament) from among the Muslim jurists nominated by the Head

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of the Judicial Power (who, in turn, is also appointed by the supreme leader).

It is charged with interpreting the Constitution of Iran,[5] supervising elections of, and approving of candidates to, the Assembly of Experts, the President and the Majlis,[6]and "ensuring ... the compatibility of the legislation passed by the Islamic Consultative Assembly [i.e. Majlis] ... with the criteria of Islam and the Constitution".

The Council has played a central role in allowing only one interpretation of Islamic values to inform Iranian law, as it consistently disqualifies reform-minded candidates—including the most well-known candidates—from running for office, and vetoes laws passed by the popularly elected Majlis.

Legislative functions

The Majlis has no legal status without the Guardian Council.[14] Any bill passed by the Majlis must be reviewed and approved by the Guardian Council to become law.

According to Article 96 of the constitution, the Guardian Council holds veto power over all legislation approved by the Majlis. It can nullify a law based on two accounts: being against Islamic laws, or being against the constitution. While all the members vote on the laws being compatible with the constitution, only the six clerics vote on them being compatible with Islam.

If any law is rejected, it will be passed back to the Majlis for correction. If the Majlis and the Council of Guardians cannot decide on a case, it is passed up to theExpediency Council for a decision.

The Guardian Council is uniquely involved in the legislative process, with equal oversight with regards to economic law and social policy, including such controversial topics as abortion.

Electoral authority

Since 1991, all candidates of parliamentary or presidential[20] elections, as well as candidates for the Assembly of Experts, have to be qualified by the Guardian Council in order to run in the election. For major elections it typically disqualifies most candidates, for example in the 2009 election, 476

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men and women applied to the Guardian Council to seek the presidency, and four were approved.

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Criticism

Increases the role of the army in everyday life

The Council favors military candidates at the expense of reform candidates. This ensures that the ideological Army of the Guardians of the Islamic Revolution (separate from the Iranian army) holds a commanding influence over the political, economic, and cultural life of Iran.[12]

Arbitrarily disqualifies candidates from elections

Hadi Khamenei, the brother of Supreme Leader Ali Khamenei and an adviser in the administration of reformist former President Mohammad Khatami, said the Guardian Council's vetting of candidates threatens Iranian democracy. He believes some reformist candidates are wrongly kept from running.[31] In 1998, the Guardian Council rejected Hadi Khamenei's candidacy for a seat in the Assembly of Experts for "insufficient theological qualifications."

After conservative candidates fared poorly in the 2000 parliamentary elections, the Council disqualified more than 3,600 reformist and independent candidates for the 2004 elections.

In the run-up to the Iranian Assembly of Experts election, 2006, all women candidates were disqualified.

The Council disqualified many candidates in the 2008 parliamentary elections. One third of them were members of the outgoing parliament it had previously approved. The Iranian Ministry of the Interior gave nebulous, arbitrary reasons for disqualifying the majority of the candidates, including narcotics addiction or involvement in drug-smuggling, connections to the Shah's pre-revolutionary government, lack of belief in or insufficient practice of Islam, being "against" the Islamic Republic, or having connections to foreign intelligence services.

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Rule by unelected leaders

This unelected Council frequently vetoes bills passed by the popularly-elected legislature. It repeatedly vetoes bills in favor of women's rights, electoral reform, the prohibition of torture and ratification of international human rights treaties.

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Political system of Malaysia

Malaysian Parliament

The **Parliament of Malaysia** is the national legislature of Malaysia, based on the Westminster system. The bicameral parliament consists of the Dewan Rakyat(House of Representatives) and the Dewan Negara (Senate). The Yang di-Pertuan Agong (King) as the Head of State is the third component of Parliament.

As the ultimate legislative body in Malaysia, the Parliament is responsible for passing, amending and repealing acts of law. It is subordinate to the Head of State, the Yang di-Pertuan Agong, under Article 39 of the Constitution.

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Dewan Rakyat. Lower House: House of Representatives

The Dewan Rakyat consists of 222 members of Parliament (MPs) elected from single-member constituencies drawn based on population in a general electionusing the first-past-the-post system. A general election is held every five years or when Parliament is dissolved by the Yang di-Pertuan Agong on the advice of the Prime Minister. Suffrage is given to registered voters 21 years and above, however voting is not compulsory. The age requirement to stand for election is 21 years and above. When a member of Parliament dies, resigns or become disqualified to hold a seat, a by-election is held in his constituency unless the tenure for the current

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Parliament is less than two years, where the seat is simply left vacant until the next general election.

Dewan Negara. Upper House: Senate

The Dewan Negara consists of 70 members (Senators); 26 are elected by the 13 state assemblies (2 senators per state), 4 are appointed by the Yang di-Pertuan Agong to represent the 3 federal territories (2 for Kuala Lumpur, 1 each for Putrajaya and Labuan). The rest 40 members are appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister. Senators must be 30 years or above, and are appointed to a three-year term for a maximum of two terms. The dissolution of the Parliament does not affect the Dewan Negara.

The *Dewan Negara* usually reviews legislation that has been passed by the lower house, the *Dewan Rakyat*. All bills must usually be passed by both the *Dewan Rakyat* and the*Dewan Negara* (the Senate), before they are sent to the King for royal assent. However, if the *Dewan Negara* rejects a bill, it can only delay the bill's passage by a maximum of a year before it is sent to the King. Like the *Dewan Rakyat*, the *Dewan Negara* meets at the Malaysian Houses of Parliament in Kuala Lumpur.

The Government:

The executive government, comprising the Prime Minister and his Cabinet, is drawn from the members of Parliament and is responsible to the Parliament. The Yang di-Pertuan Agong appoints the Prime Minister, who is the Head of Government but constitutionally subordinant to His Royal Highness, from the Dewan Rakyat. In practice, the Prime Minister shall be the one who commands the confidence of the majority of the Dewan Rakyat. The Prime Minister then submits a list containing the names of members of his Cabinet, who will then be appointed as Ministers by the Yang di-Pertuan Agong. Members of the Cabinet must also be members of Parliament, usually from the Dewan Rakyat. The Cabinet formulates government policy and drafts bills, meeting in private. The members must accept "collective responsibility" for the decisions the Cabinet makes, even if some members disagree with it; if they do not wish to be held responsible for Cabinet decisions, they must resign. Although the Constitution makes

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no provision for it, there is also a Deputy Prime Minister, who is the *de facto* successor of the Prime Minister should he die, resign or be otherwise incapacitated.[5]

If the Prime Minister loses the confidence of the Dewan Rakyat, whether by losing a no-confidence vote or by failing to pass a budget, he must either submit his resignation to the Yang di-Pertuan Agong, or ask His Royal Highness to dissolve the Parliament. If His Royal Highness refuses to dissolve the Parliament (one of the Yang di-Pertuan Agong discretionary powers), the Cabinet must resign and the Yang di-Pertuan Agong will appoint a new Prime Minister.

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Constitutional King of Malaysia: Yang di-Pertuan Agong

The **Yang di-Pertuan Agong** is the monarch and head of state of Malaysia. The office was established in 1957 when the Federation of Malaya(now Malaysia) gained independence from the United Kingdom. Malaysia is a constitutional monarchy with an elected monarch as head of state. The *Yang di-Pertuan Agong* is one of the few elected monarchs in the world. His queen consort is called *Raja Permaisuri Agong* (Queen Lady Consort). The couple are addressed in English as "His Majesty" and "Her Majesty"

Election:

The Yang di-Pertuan Agong is formally elected to a five-year term by and from among the nine rulers of the Malay states (nine of the thirteen states of Malaysia that have hereditary royal rulers), who form the Conference of Rulers (*Majlis Raja-raja*). After a ruler had served as the Yang di-Pertuan Agong, he may not stand for election until all rulers of the other states have also stood for election.

In the event of a vacancy of the office (by death, resignation, or deposition by a majority vote of the rulers), the Conference of Rulers elects a new Yang di-Pertuan Agong as if the previous term had expired. The new Yang di-Pertuan Agong is elected for a full five-year term. After his term expires,

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the Conference holds a new election, in which the incumbent would not be re-elected.

Powers and functions:

In Malaysia's constitutional monarchy, *Yang di-Pertuan Agong* has extensive powers within the constitution. The constitution specifies that the executive power of the Federal government is vested in the Yang di-Pertuan Agong and is exercised by him on the advice of the federal Council of Ministers. The latter is headed by the Prime Minister, appointed by the Yang di-Pertuan Agong from among the elected members of Parliament. Among them, Yang di-Pertuan Agong has discretionary powers to choose who he wants as the Prime Minister and is not bound by the decision of the outgoing PM if no party has won a majority vote (Article 40). It, however, does not afford him the right and authority to dismiss the PM. He also can dismiss or withhold consent to a request for the dissolution of Parliament (Article 40).[1] He may discontinue or dissolve Parliament (Article 55) but he can only dissolve Parliament at the request of the PM (Article 43). He can reject any new laws or amendments to existing laws but if he still withholds permission, it will automatically become law after 30 days from the initial submission to him (Article 66).[2]

The Yang di-Pertuan Agong appoints numerous high-ranking office holders in the Federation under the terms of the Constitution and various Acts passed by Parliament. The constitution established procedures for such appointments. He also appoints 44 members of the Dewan Negara, the Malaysian Senate.